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GENEVA CONVENTIONS  
FOR THE  
PROTECTION OF WAR VICTIMS.

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1: ANALYSIS  
OF THE  
CONVENTION RELATIVE TO THE  
TREATMENT OF PRISONERS  
OF WAR.

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[V.2]

February, 1955



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# NOTE ON COMMON ARTICLES

Certain articles of the four Geneva Conventions on War Victims are common to all the Conventions. Certain additional articles are common to the two Conventions covering wounded and sick and wounded and sick at sea. These common articles are listed below:

GWS *	GWS (Sea)	GPW	GC
1	1	1	1
2	2	2	2
3	3	3	3
4	5	-	-
6	6	6	7
7	7	7	8
8	8	8	9
9	9	9	10
10	10	10	11
11	11	11	12
12	12	-	-
13	13	-	-
14	16	-	-
16	19	-	-
17	20	-	-
36	39	-	-
37	40	-	-
39	41	-	-
40	42	-	-
45	46	-	-
46	47	-	-
47	48	127	144
48	49	128	145
49	50	129	146
50	51	130	147
51	52	131	148
52	53	132	149
54	45	-	-
55	54	133	150
56	55	136	151
57	56	137	152
58	57	138	153
59	58	134	-
60	59	139	155
61	60	140	156
62	61	141	157
63	62	142	158
64	63	143	159

\*GWS - Convention for the amelioration of the condition of the wounded and sick in Armed Forces in the field.

GWS (Sea) - Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of Armed Forces at sea.

GPW - Convention relative to the treatment of prisoners of war.

GC - Convention relative to the protection of civilian persons in time of war.

The analyses of the articles common to all four Conventions are found only in the volume covering the Prisoners of War Convention. The analyses of the articles common to the two Conventions are included only in the Wounded and Sick Convention.

ANALYSIS OF  
CONVENTION FOR THE AMELIORATION OF  
THE CONDITION OF THE WOUNDED AND  
SICK IN ARMED FORCES IN THE FIELD

GWS ARTICLE 4  
GWS (Sea) ARTICLE 5

SUBSTANCE

Application of the Convention by neutral powers.

PRESENT TEXTS

"Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded and sick, and to members of the medical personnel and to chaplains of the armed forces of the Parties to the conflict, received or interned in their territory, as well as to dead persons found." (GWS Art. 4)

"Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded, sick and shipwrecked, and to members of the medical personnel and to chaplains of the armed forces of the Parties to the conflict received or interned in their territory, as well as to dead persons found." (GWS sea Art. 5)

PREVIOUS TEXTS

Article 15 Hague Convention 1907  
on Rights & Duties Neutral Powers in Land War

"The Geneva Convention applies to sick and wounded interned in neutral territory."

BACKGROUND

The Article is a general declaration of the duties of neutral powers for situations not specifically covered by those articles in which the duties of neutral powers in certain well-defined cases are clearly stated. By analogy, it sets forth the procedures which neutral powers will follow within their own territory in dealing with medical personnel and chaplains on the one hand, and the sick, wounded, and shipwrecked on the other.

As regards the medical and religious personnel, the neutral power will be guided by the regulations which decide their treatment if they fall into enemy hands. These regulations stipulate that the permanent military medical personnel and the personnel of the national relief societies and neutral societies shall not be prisoners of war. The neutral power will therefore not retain them, but will send them

back to the belligerent in whose service they are. As regards the equipment and various articles which may be in their possession, they may all take with them their clothing, personal articles, valuables, and instruments. Moreover, as the personal property of relief societies which are admitted to the privileges of the Convention is regarded as private property, the members of these societies who are in the service of a belligerent and enter a neutral territory can take with them, on their return to their country of origin, their vehicles, rolling stock, and other material which they had with them on their arrival.

As regards military personnel temporarily used by the medical service, i.e. personnel who have received special training as stretcher-bearers or medical orderlies, but who exercise these functions only in case of need while the rest of the time they are part of the combatant troops, the neutral power is required by analogy to intern them since such personnel become prisoners of war if they fall into enemy hands.

As for the wounded, sick, and shipwrecked who may reach the territory of a neutral power, the neutral power concerned will by analogy follow the procedure of interning persons entering the neutral territory by a land frontier. Likewise, a neutral power will retain the wounded, sick, and shipwrecked collected by a neutral war vessel or by a neutral military aircraft in order to insure that they can take no further part in operations of war.

Article 5, GWS

SUBSTANCE

Provides that protected persons who have fallen into the hands of the enemy shall receive the benefits of the convention until their final repatriation.

PRESENT TEXT

For the protected persons who have fallen into the hands of the enemy, the present Convention shall apply until their final repatriation.

PREVIOUS TEXT

None.

BACKGROUND

This is a general provision covering the period of interment of protected persons until such time as repatriation is effected. It specifically applies the provisions of the present convention to all protected persons during this period of custody by the enemy. Previous conventions implied such application but did not state so specifically.



GWS ARTICLE 12  
GWS (Sea) ARTICLE 12

SUBSTANCE

Defines the protection and care to which the wounded and sick are entitled. Enumerates and expressly prohibits some of the most serious offenses of which a belligerent might be guilty toward the wounded and sick in its power. In the Sea Convention also embodies a definition of the term "shipwreck" to mean shipwreck from any cause, including forced landings at sea by or from aircraft.

PRESENT TEXTS

"Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances.

"They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

"Only urgent medical reasons will authorize priority in the order of treatment to be administered.

"Women shall be treated with all consideration due to their sex.

"The Party to the conflict which is compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care." (GWS Art. 12)

"Members of the armed forces and other persons mentioned in the following Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances, it being understood that the term "shipwreck" means shipwreck from any cause and includes forced landings at sea by or from aircraft.

"Such persons shall be treated humanely and cared for by the Parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

"Only urgent medical reasons will authorize priority in the order of treatment to be administered.

"Women shall be treated with all consideration due to their sex." (GWS sea Art. 12)

#### PREVIOUS TEXTS

##### Article 1 GWS 1929

"Officers and soldiers and other persons officially attached to the armed forces who are wounded or sick shall be respected and protected in all circumstances; they shall be treated with humanity and cared for medically, without distinction of nationality, by the belligerent in whose power they may be.

"Nevertheless, the belligerent who is compelled to abandon wounded or sick to the enemy, shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to help with their treatment."

##### Article 11 GWS sea 1907

"Sailors and soldiers on board, when sick or wounded, as well as other persons officially attached to fleets or armies, whatever their nationality, shall be respected and tended by the captors."

#### BACKGROUND

In this Article an attempt has been made to define more accurately the manner in which the wounded and sick are to be treated and cared for by the parties to the conflict in order to avoid some of the unfortunate experiences of the last war. The Article explicitly prohibits any differential treatment on the basis of sex, race, nationality, religion, political opinions, or any other similar criteria. Only urgent medical reasons authorizes priority in the order of treatment to be administered. It is intended thereby to

insure that all wounded and sick whether friend or foe, shall be treated on a footing of perfect equality as regards the protection, respect, and care to which they are entitled. The new provisions also enumerate and expressly prohibit the following serious offense against the wounded and sick in the power of a belligerent; attempts on their lives or violence to their persons, murder or extermination, subjection to torture or to biological experiments, deliberate abandonment without medical care, or exposure to risk of contagion or infection created for that purpose. The Article also provides that women shall be treated with all consideration due to their sex. This is in addition to the other safeguards embodied in the Article, to the benefits of which women are entitled equally with men.

The Article retains the provision of the 1929 convention that a party to a conflict which is compelled to abandon wounded or sick to the enemy must, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care. Although the provision is qualified by the reservation "as far as military considerations permit", it represents nevertheless a clear moral obligation which the responsible authority cannot evade except in cases of urgent necessity. It should be noted, moreover, that the provision is in no way bound up with the obligation imposed upon the parties to the conflict to care for the wounded. There is no exception to this obligation. A belligerent can never refuse to care for enemy wounded he has picked up on the pretext that his adversary has abandoned them without medical personnel and equipment.

GWS ARTICLE 13  
GWS (Sea) ARTICLE 13

SUBSTANCE

Defines the different categories of persons who, if sick or wounded, shall be entitled to the benefit of the Convention. Extends the protection to all persons who in the event of their falling into the enemy's hands, would be treated as prisoners of war.

PRESENT TEXT

"The present Convention shall apply to the wounded and sick (and shipwrecked at sea) belonging to the following categories:

- (1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.
- (2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:
  - (a) that of being commanded by a person responsible for his subordinates;
  - (b) that of having a fixed distinctive sign recognizable at a distance;
  - (c) that of carrying arms openly;
  - (d) that of conducting their operations in accordance with the laws and customs of war.
- (3) Members of regular armed forces who profess allegiance to a Government or an authority not recognized by the Detaining Power.
- (4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply

contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany.

- (5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions in international law.
- (6) Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war."

#### PREVIOUS TEXTS

None.

#### BACKGROUND

The 1929 GWS and 1907 Hague conventions applied only to members of the armed forces and to other persons officially attached to them. The new Convention extends the field of application to other categories of persons. Members of militias and corps of volunteers, including those of organized resistance movements not forming part of the armed forces of a party to the conflict are one of the new groups protected, provided certain conditions are fulfilled. It is defined that these corps and militias may legally operate in or outside their own territory even if it is occupied. This is an important innovation which has become necessary as a result of the experience of World War II.

Other categories covered and not before included in conventional international law are (1) members of regular forces who profess allegiance to a government not recognized by the detaining power, and (2) members of crews of merchant marine and civil aircraft who do not benefit by more favorable treatment under any other provisions of international law.

Article 13 has its origin and real significance in the POW Convention wherein the enumerated categories determine whether or not an individual has the status of a prisoner of war. The

enumeration in Article 13 does not by any means have the same significance. In virtue of a humanitarian principle, universally recognized in international law, of which the Geneva Conventions are merely the practical expression, any wounded or sick person, even a criminal, is entitled to respect and humane treatment and the care which his condition requires. Article 13 cannot therefore in any way entitle a belligerent to refrain from respecting a wounded person, or to deny him the requisite treatment, even where he does not belong to one of the categories specified in the Article. Any wounded person, whoever he may be, must be treated by the enemy in accordance with the Geneva Convention. However, since Article 14 stipulates that wounded and sick who fall into enemy hands are to be prisoners of war, the wounded and sick conventions have been drafted to conform with the POW Convention.



Article 14, GWS  
Article 16, GWS Sea

SUBSTANCE

Provides for prisoner of war status and the application of the GPW convention for wounded, sick and shipwrecked who fall into enemy hands.

PRESENT TEXT

Article 14

Subject to the provisions of Article 12, the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them.

Article 16

Subject to the provisions of Article 12, the wounded, sick and shipwrecked of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them. The captor may decide, according to circumstances, whether it is expedient to hold them, or to convey them to a port in the captor's own country, to a neutral port or even to a port in enemy territory. In the last case, prisoners of war thus returned to their home country may not serve for the duration of the war.

PREVIOUS TEXT

Article 14 of the 1907 Hague Convention

The shipwrecked, wounded or sick of one of the belligerents who fall into the power of the other belligerent are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

Article 9 of the 1899 Hague Convention (III)

The shipwrecked, wounded, or sick of one of the belligerents who fall into the hands of the other are prisoners of war. The captor must decide, according to circumstances, if it is best to keep them, or send them to a port of his own country, to a neutral port or even to a hostile port. In the last case, prisoners thus repatriated cannot serve as long as the war lasts.

Article 14, GWS  
Article 16, GWS Sea

Art. 2 para. 1 of the Red Cross Convention of 1929

Subject to the care that must be taken of them under the preceding Article, the wounded and sick of an army who fall into the power of the other belligerent shall become prisoners of war, and the general rules of international law in respect to prisoners of war shall become applicable to them.

BACKGROUND

Arts. 14 GWS and 16 GWS Sea are a rephrasing of the established principle of international law contained in Art. 2.1 of the Red Cross Convention of 1929, as well as Art. 14 of the 1907 Hague (X) Convention and Art. 9 of the 1899 Hague (III) Convention. Both articles include the additional safeguard that the treatment of these persons shall be subject to the provisions of Art. 12. There was apparently no thought, by the language of this Article, of establishing standards for the treatment of a party's own personnel by that party itself.



Article 15, GWS

SUBSTANCE

Requires Parties to search for and remove casualties after each engagement, and to protect from ill-treatment. Permits conclusion of local arrangements for removal and exchange of wounded and sick from besieged areas.

PRESENT TEXT

At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, an armistice or a suspension of fire shall be arranged, or local arrangements made, to permit the removal, exchange and transport of the wounded left on the battlefield.

Likewise, local arrangements may be concluded between Parties to the conflict for the removal or exchange of wounded and sick from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way to that area.

PREVIOUS TEXT

Article 3 of the Red Cross Convention of 1929

After every engagement, the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and the dead and protect them from robbery and ill-treatment.

A local armistice or cessation of fire to enable the removal of wounded left between the lines shall be arranged whenever circumstances permit.

BACKGROUND

Paragraphs 1 and 3 of Art. 15 are identical in substance with Art. 18 of GWS Sea, adapted to land as contrasted to naval warfare.

It rewords the general principle embodied in Art. 3 of the 1929 Convention, as well as Art. 16 par. 1 of the 1907 Hague (X) Convention,

Article 15, GWS

making the obligation more definite by spelling out that the wounded and sick have to be collected. The last paragraph, as that of Art. 18 GWS Sea, is new and based on WW II experience, which showed the value of local cease fire arrangements and arrangements for removal and exchange of wounded and sick.

Article 16, GWS  
Article 19, GWS Sea

SUBSTANCE

Requires a party as soon as possible to record and forward -- through its POW Identification Bureau, the Protecting Power and the Central POW Agency -- to the adversary, specified available information to establish identity, physical condition or cause of death of wounded, sick, shipwrecked and dead.

Requires forwarding of personal effects of dead.

PRESENT TEXT

Article 16

Parties to the conflict shall record as soon as possible, in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification.

These records should if possible include:

- (a) designation of the Power on which he depends;
- (b) army, regimental, personal or serial number;
- (c) surname;
- (d) first name or names;
- (e) date of birth;
- (f) any other particulars shown on his identity card or disc;
- (g) date and place of capture or death;
- (h) particulars concerning wounds or illness, or cause of death.

As soon as possible the above mentioned information shall be forwarded to the Information Bureau described in Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of a double identity disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are

Article 16, GWS  
Article 19, GWS Sea

found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel.

Article 19

The Parties to the conflict shall record as soon as possible, in respect of each shipwrecked, wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification. These records should if possible include:

- (a) designation of the Power on which he depends;
- (b) army, regimental, personal or serial number;
- (c) surname;
- (d) first name or names;
- (e) date of birth;
- (f) any other particulars shown on his identity card or disc;
- (g) date and place of capture or death;
- (h) particulars concerning wounds or illness, or cause of death.

As soon as possible the above-mentioned information shall be forwarded to the information bureau described in Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of the double identity disc, or the identity disc itself if it is a single disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel.

Article 16, GWS  
Article 19, GWS Sea

PREVIOUS TEXT

Article 17 of the 1907 Hague Convention

Each belligerent shall send, as early as possible, to the authorities of their country, navy or army the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him. The belligerents shall keep each other informed as to the interments and transfers as well as to the admissions into hospitals and deaths which have occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, etc., which are found in the captured ships, or which have been left by the sick and wounded who died in hospitals, in order to have them forwarded to the persons concerned by the authorities of their own country.

Article 4, paragraphs 1 - 3, Red Cross Convention of 1929

Belligerents shall mutually forward to each other as soon as possible the names of the wounded, sick and dead taken in charge or discovered by them, as well as all indications which may serve for their identification. They shall draw up and forward to each other death certificates. They shall collect and likewise forward to each other all objects of personal use found on the field of battle or on the dead, especially one-half of their identity plaque, the other half remaining attached to the body.

BACKGROUND

Articles 16 GWS and 19 GWS, Sea spell out in detail what information concerning the wounded, sick and dead should be forwarded, all designed to facilitate identification to the other Party. It also provides for the use of the Prisoner of War Information Bureau, the Protecting Power, and the Central Prisoners of War Agency, to expedite forwarding of all available information.



Article 17, GWS  
Article 20, GWS Sea

SUBSTANCE

Requires parties to verify fact of death by careful examination prior to burial and to establish identity to enable a report to be made.

PRESENT TEXT

Article 17

Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body.

Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation, the circumstances and reasons for cremation shall be stated in detail in the death certificate or on the authenticated list of the dead.

They shall further ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found. For this purpose, they shall organize at the commencement of hostilities an Official Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies, whatever the site of the graves, and the possible transportation to the home country. These provisions shall likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

As soon as circumstances permit, and at latest at the end of hostilities, these Services shall exchange, through the Information Bureau mentioned in the second paragraph of Article 16, lists showing the exact location and markings of the graves, together with particulars of the dead interred therein.

Article 20

Parties to the conflict shall ensure that burial at sea of the dead, carried out individually as far as circumstances permit, is preceded

Article 17, GWS  
Article 20, GWS Sea

by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. Where a double identity disc is used, one half of the disc should remain on the body.

If dead persons are landed, the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, shall be applicable.

PREVIOUS TEXT

GWS

Article 3, GWS 1906:

"He will see that a careful examination is made of the bodies of the dead prior to their interment or incineration."

Article 4, GWS 1929:

"They shall see that a careful examination, if possible, medical, is made of the bodies of the dead prior to their interment or cremation, with a view to verifying their death, establishing their identity, and in order to be able to furnish a report thereon.

"They shall further see that they are honorably buried and that the graves are treated with respect and may always be found again.

"For this purpose, and at the outbreak of hostilities, they shall officially organize a service of graves in order to render any later exhumation possible and to make certain of the identity of bodies even though they may have been moved from grave to grave.

"Upon termination of hostilities, they shall exchange lists of graves and of dead buried in their cemeteries and elsewhere."

GWS Sea

Article 16, Hague Convention 1907:

"They shall see that burial, whether by land or sea, or cremation of the dead shall be preceded by a careful examination of the corpse."

Article 17, GWS  
Article 20, GWS Sea

BACKGROUND

In connection with the handling of the dead, new provisions have been included. Burial or cremation shall, as far as possible, be carried out individually and not collectively. Bodies shall not be cremated, except for imperative reasons of hygiene or for motives based on the religion of the deceased.



Article 18, GWS

SUBSTANCE

Permits appeal by military authorities to local inhabitants to collect and care for the wounded and sick. Permits special protection and facilities to be granted to persons who have responded to such an appeal.

PRESENT TEXT

The military authorities may appeal to the charity of the inhabitants voluntarily to collect and care for, under their direction, the wounded and sick, granting persons who have responded to this appeal the necessary protection and facilities. Should the adverse Party take or retake control of the area, he shall likewise grant these persons the same protection and the same facilities.

The military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick of whatever nationality. The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed the wounded or sick.

The provisions of the present Article do not relieve the occupying Power of its obligation to give both physical and moral care to the wounded and sick.

PREVIOUS TEXT

Article 5 of the Red Cross Convention of 1929

The military authorities may make an appeal to the charitable zeal of the inhabitants to receive and, under its supervision to care for, the wounded or sick of the armies, granting persons responding to such appeals special protection and certain facilities.

BACKGROUND

Art. 18 is the counterpart to GWS Sea Art. 21. Art. 18 introduces a new principle by imposing an obligation on the Parties to permit the inhabitants and relief societies of occupied areas to care for the sick and wounded. It also provides that the present Article does not relieve the occupying power of its obligation towards the wounded and sick.

Article 19, GWS

SUBSTANCE

Provides that the parties to the conflict are bound to respect and protect medical treatment facilities from attack, and in the event of falling into the hands of the adverse Party, personnel engaged in care of patients shall continue such duties as long as capturing power does not provide such service. Requires parties to insure that the location of such facilities are removed from military objectives.

PRESENT TEXT

Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict. Should they fall into the hands of the adverse Party, their personnel shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of the wounded and sick found in such establishments and units.

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

PREVIOUS TEXT

GWS Article 6, GWS 1929:

Mobile sanitary formations, i.e., those which are intended to accompany armies in the field, and the fixed establishments belonging to the sanitary service shall be protected and respected by the belligerents.

BACKGROUND

A provision requiring continued medical care by medical personnel falling into the hands of the adverse Party where the capturing Power does not provide the required care is added.

The responsibility of all parties to locate military medical treatment facilities in such areas that attacks against military objectives will not imperil their safety is clearly defined.

Article 20, GWS

SUBSTANCE

Provides that hospital ships entitled to the protection of GWS sea and shall not be attacked from the land.

PRESENT TEXT

Hospital ships entitled to the protection of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, shall not be attacked from the land.

PREVIOUS TEXT

None.

BACKGROUND

It was considered advisable to mention in the Wounded and Sick Convention that hospital ships shall not be attacked from land.

Article 21, GWS

SUBSTANCE

Provides that protection of medical units will continue as long as they continue their humanitarian duties, and may be withdrawn only after reasonable warning has been given.

PRESENT TEXT

The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.

PREVIOUS TEXT

GWS Article 7, GWS 1929

The protection due to sanitary formations and establishments shall cease if they are used to commit acts injurious to the enemy.

BACKGROUND

Art. 21 corresponds to Art. 34 of the GWS Sea Convention. Both Conventions have the added provision that protection does not cease until after due warning has been given, setting a reasonable time limit, and the warning has remained unheeded. The time limit depends in all cases on the circumstances. Comment of Committee I states:

"a belligerent could not be expected to expose his own troops to serious risks owing to the failure of a hospital to fulfill one of its main obligations."



Article 22, GWS

SUBSTANCE

Specifies conditions which shall not deprive medical units or establishments of protection guaranteed by Article 19.

PRESENT TEXT

The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 19:

- (1) That the personnel of the unit or establishment are armed, and that they use the arms in their own defence, or in that of the wounded and sick in their charge.
- (2) That in the absence of armed orderlies, the unit or establishment is protected by a picket or by sentries or by an escort.
- (3) That small arms and ammunition taken from the wounded and sick and not yet handed to the proper service, are found in the unit or establishment.
- (4) That personnel and material of the veterinary service are found in the unit or establishment, without forming an integral part thereof.
- (5) That the humanitarian activities of medical units and establishments or of their personnel extend to the care of civilian wounded or sick.

PREVIOUS TEXT

GWS, Article 8, GWS 1929:

A sanitary formation or establishment shall not be deprived of the protection accorded by Article 6 by the fact:

- (1) That the personnel of the formation or establishment is armed and uses its arms in self-defense or in defense of its wounded and sick;
- (2) That in the absence of armed hospital attendants the formation is guarded by an armed detachment or by sentinels;
- (3) That hand firearms or ammunition taken from the wounded and sick and not yet turned over to the proper authorities are found in the formation or establishment;

Article 22, GWS

(4) That there is found in the formation or establishment personnel or materiel of the veterinary service which does not integrally belong to it.

BACKGROUND

A condition intended to permit the extension of medical care to civilians has been added. The presence of such civilians as patients will not act to remove the protection afforded.

Article 23, GWSSUBSTANCE

Provides for the advance planning of location of medical establishments with a view to effecting agreements between the parties concerned for recognition of such hospital zones and localities. Invites the Protecting Powers and International Committee of the Red Cross to assist in the recognition of such zones and localities.

PRESENT TEXT

In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital zones and localities so organized as to protect the wounded and sick from the effects of war, as well as the personnel entrusted with the organization and administration of these zones and localities and with the care of the persons therein assembled.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the hospital zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital zones and localities.

PREVIOUS TEXT

Article 5, 5th Congress International de Statistique

In time of war the Committees of belligerent nations furnish help in the measure of their resources, to their respective armies; and in particular organize and put on an active basis the voluntary nurses, and arrange sites for the establishment of hospitals, with the sanction of the military authority. They may solicit the assistance of Committees belonging to neutral nations.

BACKGROUND

The provisions of this article do not appear in GWS 1929. Some reference is contemplated in the contents of the 5th Congress International de Statistique. Advance planning of location was apparently not considered of sufficient importance in the 1929 Convention to warrant inclusion.

Article 24, GWS

SUBSTANCE

Requires that medical personnel and chaplains shall be respected and protected in all circumstances.

PRESENT TEXT

Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances.

PREVIOUS TEXT

Article 9, GWS 1906 and Article 9, GWS 1929:

"The personnel charged exclusively with the removal, transportation, and treatment of the sick and wounded, as well as with the administration of sanitary formations and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances."

BACKGROUND

Continues the protection afforded regular personnel of the medical and chaplain services by previous conventions, with no substantive change. The new article adds prevention of disease to the list of duties of medical personnel. In modern armies, hygienic and prophylactic measures for the prevention of disease form an important part of the work of the medical staff.



Article 25, GWS

SUBSTANCE

Requires that members of the armed forces who, though not exclusively members of the medical services, are specially trained to enable them to carry out medical duties, shall be respected and protected if they are carrying out these duties at the time they come in contact with the enemy or are captured.

PRESENT TEXT

Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands.

PREVIOUS TEXT

GWS: Article 9, 1929

Replaces the following portion of Article 9, GWS 1929:

"Military personnel which has received special instructions to be used when necessary as auxiliary attendants or litter bearers in the removal, transportation, and treatment of the wounded and sick, and bearing an identification document, shall benefit by the same conditions as the permanent sanitary personnel if they are captured at the moment when they are fulfilling these functions."

BACKGROUND

This article continues to recognize the category of auxiliary medical personnel as introduced in the 1929 convention, but with a complete change in the manner in which they are to be protected. The 1929 convention provided that they would have, in principle, the same right as permanent medical personnel to repatriation; it did not give them special protection on the battlefield before capture however, not considering it possible to authorize them to wear the armlet. The new article provides that they will now be protected "if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands," i.e., on the battlefield. Once in enemy hands however, they will become ordinary prisoners of war without right to repatriation (Article 29).

Article 25, GWS

POSSIBLE QUESTIONS

Q. Is protection provided for ordinary members of the Armed Forces who are, in exceptional circumstances, called upon to collect or look after the wounded?

A. No. To be accorded immunity on the battlefield, members must have received special medical training beforehand, wear a special armlet, and have specified on their identity documents the training they have received, the temporary character of their duties and their authority for wearing the armlet (Article 41). If ordinary combatants should be sent to collect the wounded without previous arrangement, it would be at their own risk.

Article 26, GWSSUBSTANCE

Provides that personnel of National Red Cross and voluntary aid societies, employed on medical duties, be placed on the same footing as medical personnel and chaplains.

Requires each Party to notify the other of the names of societies authorized to assist the medical services of its armed forces, prior to their employment.

PRESENT TEXT

The staff of National Red Cross Societies and that of other Voluntary Aid Societies, duly recognized and authorized by their Governments, who may be employed on the same duties as the personnel named in Article 24, are placed on the same footing as the personnel named in the said Article, provided that the staff of such societies are subject to military laws and regulations.

Each High Contracting Party shall notify to the other, either in time of peace, or at the commencement of or during hostilities, but in any case before actually employing them, the names of the societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armed forces.

PREVIOUS TEXT

Replaces Article X, GWS 1906:

"The personnel of voluntary aid societies, duly recognized and authorized by their own governments, who are employed in the sanitary formations and establishments of armies, are assimilated to the personnel contemplated in the preceding article, upon condition that the said personnel shall be subject to military laws and regulations.

"Each state shall make known to the other, either in time of peace or at the opening, or during the progress, of hostilities, and in any case before actual employment, the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies."

Replaces Article X, GWS 1929:

"The personnel of voluntary aid societies, duly recognized and authorized by their Government, who are employed in the same functions as the personnel contemplated in Article 9, Paragraph 1, are assimilated to that personnel upon condition that the said societies shall be subject to military laws and regulations.

Article 26, GWS

"Each High Contracting Party shall make known to the other, either in time of peace or at the opening, or during the progress, of hostilities, and in any case, before actual employment, the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies."

BACKGROUND

Article 26 is a rephrasing of Article 10, GWS 1929, with no substantive change.

Article 27, GWS

SUBSTANCE

Provides that a recognized Society of a neutral country can lend medical personnel and units to a Party to the conflict and specifies conditions under which this can be accomplished.

PRESENT TEXT

A recognized Society of a neutral country can only lend the assistance of its medical personnel and units to a Party to the conflict with the previous consent of its own Government and the authorization of the Party to the conflict concerned. That personnel and those units shall be placed under the control of that Party to the conflict.

The neutral Government shall notify this consent to the adversary of the State which accepts such assistance. The Party to the conflict who accepts such assistance is bound to notify the adverse Party thereof before making any use of it.

In no circumstances shall this assistance be considered as interference in the conflict.

The members of the personnel named in the first paragraph shall be duly furnished with the identity cards provided for in Article 40 before leaving the neutral country to which they belong.

PREVIOUS TEXT

Replaces Article XI, GWS 1906:

"A recognized society of a neutral state can only lend the services of its sanitary personnel and formations to a belligerent with the prior consent of its own government and the authority of such belligerent. The belligerent who has accepted such assistance is required to notify the enemy before making any use thereof."

Replaces Article 11, GWS 1929:

"A recognized society of a neutral country may only lend the services of its sanitary personnel and formations to a belligerent with the prior consent of its own Government and the authority of such belligerent.

"The belligerent who has accepted such assistance shall be required to notify the enemy before making any use thereof."



Article 27, GWSBACKGROUND

Article 27 continues, in substance, the provision that medical personnel and units may be loaned by a recognized Society of a neutral country to a Party to a conflict. New provisions have been included. Personnel and units so loaned are to be placed under the control of the Party to the conflict concerned. The neutral Government is required to notify the adversary State of their consent. Identity cards provided for in Article 40, GWS 1949, must be furnished personnel concerned before leaving the neutral country to which they belong. The new article also specifies that in no circumstances shall their assistance be considered an interference in the conflict by the neutral country. Although this principle was implicit in the spirit of the Geneva Convention of 1929, experience showed that on many occasions neutral medical assistance was wrongly interpreted, was the subject of criticism based on ignorance or malevolence. This provision was included, therefore, to eliminate misunderstanding.

In connection with the notification of the adverse Party by the neutral Government required by the new article, the intention of the author of the proposal was:

- (a) To crystallize a procedure which had until then been vague,  
and
- (b) To indicate that the neutral state accepted responsibility  
for the aid sent.

There formerly was no concrete evidence of the neutral state's consent and belligerents might be uncertain in regard to it. Element "b" is, no doubt, explained by a desire to see some connection maintained between the neutral state and its citizens who have gone to the theater of war. Should they be captured, or otherwise need help, they may appeal to their home country which will be better placed to defend their interests than the other belligerent.

Article 28, GWSSUBSTANCE

Provides that personnel designated in Articles 24 and 26 who are captured shall be retained only insofar as the medical and spiritual needs of prisoners of war require. Certain rules are set forth governing their retention, and although not considered as prisoners of war they are to receive at a minimum the benefits accorded prisoners of war.

PRESENT TEXT

Personnel designated in Articles 24 and 26 who fall into the hands of the adverse Party, shall be retained only in so far as the state of health, the spiritual needs and the number of prisoners of war require.

Personnel thus retained shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. Within the framework of the military laws and regulations of the Detaining Power, and under the authority of its competent service, they shall continue to carry out, in accordance with their professional ethics, their medical and spiritual duties on behalf of prisoners of war, preferably those of the armed forces to which they themselves belong. They shall further enjoy the following facilities for carrying out their medical or spiritual duties:

- (a) They shall be authorized to visit periodically the prisoners of war in labour units or hospitals outside the camp. The Detaining Power shall put at their disposal the means of transport required.
- (b) In each camp the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel. For this purpose, from the outbreak of hostilities, the Parties to the conflict shall agree regarding the corresponding seniority of the ranks of their medical personnel, including those of the societies designated in Article 26. In all questions arising out of their duties, this medical officer, and the chaplains, shall have direct access to the military and medical authorities of the camp who shall grant them the facilities they may require for correspondence relating to these questions.
- (c) Although retained personnel in a camp shall be subject to its internal discipline, they shall not, however, be required to perform any work outside their medical or religious duties.



Article 28, GWS

During hostilities the Parties to the conflict shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief.

None of the preceding provisions shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of the prisoners of war.

PREVIOUS TEXT

Replaces the following portion of Article IX, GWS 1906:

"If they fall into the hands of the enemy they shall not be considered as prisoners of war."

Replaces the following portion of Article XII, GWS 1906, insofar as it applies to the personnel mentioned in the new article:

"Persons described in Articles 9, 10 and 11 will continue in the exercise of their functions, under the direction of the enemy, after they have fallen into his power."

Replaces the following portion of Article 9, GWS 1929:

"If they fall into the hands of the enemy, they shall not be treated as prisoners of war."

Replaces the following portion of Article 12, GWS 1929, insofar as it applies to the personnel mentioned in the new article:

"The persons described in Articles 9, 10 and 11 may not be detained after they have fallen into the power of the adversary."

BACKGROUND

The status of regular medical and chaplain personnel and of personnel of voluntary aid societies after capture by the enemy, is changed by the new article. The Convention of 1929 explicitly prohibited the detention of such personnel, although it did provide in Article 12 that an agreement could be concluded by the belligerents for retaining such personnel temporarily. But this procedure was regarded as being exceptional.

Article 28, GWS

Experiences of World War II taught the need of providing for retention of part of the medical personnel fallen into enemy hands for the purpose of nursing sick prisoners of war. The difficulty of implementing, under circumstances of modern war, the provision that medical personnel may not be retained was also illustrated. During the conference two opinions regarding the status of this personnel were held: one, that all medical personnel should be assimilated to prisoners of war; and two, that the traditional immunity of this personnel and their right to repatriation should be continued with personnel being retained only in exceptional cases. The compromise which was adopted is calculated to protect the interests of prisoners of war and the wounded.

Under the new article, such personnel may automatically be retained without the previous agreement provided for by the 1929 Convention insofar as the state of health, spiritual needs and number of prisoners of war require; otherwise they shall be repatriated. Personnel thus retained are not to be deemed prisoners of war, but they are to be accorded the benefits of all the provisions of the prisoners of war convention, and in addition, special facilities in regard to correspondence and travel essential for the proper performance of their duties.

Paragraph 3 deals with the relief, where possible, of retained personnel. During the last World War, certain belligerents planned to relieve doctors retained in enemy camps by personnel from the home country. A beginning was made in the case of some Yugoslav doctors and a larger number of French doctors retained in Germany. The Diplomatic Conference (1949) did not consider that it could make such arrangements compulsory; it merely provided for their possibility by agreement between the Powers concerned. Security considerations seem bound to create difficulties; and it is worth pointing out that on the one occasion when relief on a partial scale was found possible during World War II, the home country of the medical officers concerned was itself occupied by the Detaining Power. Nevertheless, the Conference, in its Resolution 3, requested the International Committee of the Red Cross to prepare a model agreement for use in such cases.

The last paragraph provides that none of the provisions of the article shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of prisoners of war. A Detaining Power must not be able to use the fact that retention is authorized of a portion of the opposing Party's medical and religious personnel as a pretext for avoiding its own obligations, or as justification for a dereliction on its part; it may not, for example, find in the retention of enemy medical personnel a reason for not making available such of its own personnel as

Article 28, GWS

may be necessary. Retention must remain a supplementary measure taken for the good of the prisoners themselves, and to assist the Detaining Power. The latter continues to be fully responsible for the prisoners of war who have fallen into its hands.

Article 28, GWS

POSSIBLE QUESTIONS

Q. What are the various elements which go to make up the special status and treatment accorded to medical personnel and chaplains who have fallen into enemy hands and are retained to care for their fellow prisoners?

A. 1. They are not prisoners of war, but enjoy the special immunity which attaches to their status.

2. Because of their position as "retained persons," their enemy nationality and the fact that it is necessary for a Detaining Power to ensure its security, their liberty may, in practice, be restricted.

3. They are subject to the laws and regulations of the Detaining Power, and to camp discipline.

4. They carry out their duties in accordance with their professional ethics.

5. They may not be compelled to do any work outside their proper sphere of duty.

6. They may visit labour detachments and hospitals.

7. The "responsible medical officer" and the chaplains have direct access to the authorities and special facilities for correspondence.

8. They receive, as a minimum, the benefits and protection of the Prisoners of War Convention, in so far as express provision has not already been made to meet their case (see points 3 and 7 above).

The new status of medical personnel who have fallen into enemy hands is thus a very complicated matter. Experience alone can show if the system patiently built up will work, or whether it will have to be reconsidered and completely recast.



Article 29, GWS

SUBSTANCE

Provides that members of the Armed Forces temporarily attached to the medical service (Article 25) will, upon capture, be treated as prisoners of war, but shall be employed on medical duties insofar as the need arises.

PRESENT TEXT

Members of the personnel designated in Article 25 who have fallen into the hands of the enemy, shall be prisoners of war, but shall be employed on their medical duties in so far as the need arises.

PREVIOUS TEXT

GWS: Article 9, 1929:

Replaces the following portion of Article 9, GWS 1929, insofar as it pertains to members temporarily attached to the medical service:

"If they fall into the hands of the enemy they shall not be treated as prisoners of war."

GWS: Article 12, 1929:

Replaces Article 12, GWS 1929, insofar as it pertains to members temporarily attached to the medical service:

"The persons described in Articles 9, 10 and 11 may not be detained after they have fallen into the power of the adversary.

"Unless there is an agreement to the contrary, they shall be sent back to the belligerent to whose service they are attached as soon as a way is open for their return and military exigencies permit.

"While waiting to be returned, they shall continue in the exercise of their functions under the direction of the adversary; they shall be assigned preferable to the care of the wounded and sick of the belligerent to whose service they are attached.

"At the time of their departure they may carry with them such effects, instruments, arms and means of transport as belong to them."

Article 29, GWSBACKGROUND

The new convention changes the status after capture of members of the Armed Forces who are only temporarily attached to the medical service. The convention of 1929 provided for their return on the same conditions as those applicable to permanent medical personnel. The new article, however, provides that they should be treated as prisoners of war, but shall be employed in caring for the wounded and sick.

The change which was adopted is justified on several grounds:

a. There is no real affinity of status between auxiliary personnel and permanent medical and religious personnel. Auxiliary personnel are as much "combatant" as medical, and their repatriation would help to increase the military potential of the home country.

b. Although this former article did not give rise to abuse, it was nevertheless open to it. One can well imagine a belligerent giving training as stretcher-bearers to large numbers of fighting troops, in order to furnish them with a claim to repatriation should they be captured.

c. In modern warfare troops are frequently captured in large groups, following encircling operations. In most such cases it will be impossible to establish whether or not particular soldiers were engaged on medical work at the moment of capture.



Article 29, GWS

POSSIBLE QUESTIONS

Q. Should the presence in prisoner of war camps of auxiliary medical personnel (i.e., of stretcher-bearers and medical orderlies) involve a reduction in the proportion of permanent medical personnel retained?

A. The convention has no specific provision dealing with this point. The matter must therefore be left to the agreements which belligerents are invited to conclude, or, in default of such agreements, to the judgment of the Detaining Power, which, under the terms of Article 45, must always be guided by the general provisions of the convention when dealing with unforeseen cases.

If some of them are sufficiently well trained to fill necessary posts satisfactorily and permanently, the freeing of a corresponding number of the permanent medical orderlies retained under Article 28 would be in accordance with the spirit and general principles of the convention.

Q. What is the status of auxiliary personnel in captivity?

A. When they are not doing medical work, they will be treated as ordinary prisoners of war. When they are employed on medical duties it appears that they should have the benefit of the provisions of Article 32 of the Prisoners of War Convention, which applies to prisoners who, though not attached to the medical service, are doctors, medical orderlies, etc., and are required by the Detaining Power to exercise their profession. According to the terms of this Article, "... they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power."

Article 30, GWS

SUBSTANCE

Provides that personnel not retained under the provisions of Article 28 shall be returned as soon as a road is open and military requirements permit. Certain rules relative to their return and their status prior to return are set forth.

PRESENT TEXT

Personnel whose retention is not indispensable by virtue of the provisions of Article 28 shall be returned to the Party to the conflict to whom they belong, as soon as a road is open for their return and military requirements permit.

Pending their return, they shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. They shall continue to fulfil their duties under the orders of the adverse Party and shall preferably be engaged in the care of the wounded and sick of the Party to the conflict to which they themselves belong.

On their departure, they shall take with them the effects, personal belongings, valuables and instruments belonging to them.

PREVIOUS TEXT

GWS: Article 13, 1906:

Replaces the following portion of Article XII, GWS 1906, insofar as it applies to the personnel mentioned in the new article:

"When their (refers to persons described in Articles 9, 10 and 11) assistance is no longer indispensable they will be sent back to their army or country, within such period and by such route as may accord with military necessity. They will carry with them such effects, instruments, arms, and horses as are their private property."

GWS: Article 12, 1929:

Replaces the following portion of Article 12, GWS 1929, insofar as it applies to the personnel mentioned in the new article:

"Unless there is an agreement to the contrary, they (refers to persons described in Articles 9, 10 and 11) shall be sent back to the

Article 30, GWS

belligerent to whose service they are attached as soon as a way is open for their return and military exigencies permit.

"While waiting to be returned they shall continue in the exercise of their functions under the direction of the adversary; they shall be assigned preferably to the care of the wounded and sick of the belligerent to whose service they are attached.

"At the time of their departure they may carry with them such effects, instruments, arms, and means of transport as belong to them."

BACKGROUND

The provisions of the previous conventions are continued without substantive change. The repatriation of medical personnel, traditionally a principle of the Geneva Convention, remains the essential rule. Retention is only a secondary possibility. Consequently, all permanent medical and religious personnel whose retention is not indispensable under the provisions of Article 28 should be sent back to the belligerent to whom they belong.

The 1929 Convention included arms and means of transport among the personal belongings which medical personnel were authorized to take with them on departure. It was felt that this would be difficult to apply in practice, therefore these items are omitted in the new article.

Article 30, GWS

POSSIBLE QUESTIONS

Q. On repatriation, may medical personnel take with them instruments entrusted to them by their home country?

A. No. All articles taken with them must "belong to them." The articles in question cannot be taken away, but come under the provisions dealing with medical equipment of the armed forces.

Article 31, GWS

SUBSTANCE

Requires that selection of personnel to be returned under Article 30 be without prejudice and provides that Parties may make an agreement on the percentage of personnel to be retained.

PRESENT TEXT

The selection of personnel for return under Article 30 shall be made irrespective of any consideration of race, religion or political opinion, but preferably according to the chronological order of their capture and their state of health.

As from the outbreak of hostilities, Parties to the conflict may determine by special agreement the percentage of personnel to be retained, in proportion to the number of prisoners and the distribution of the said personnel in the camps.

PREVIOUS TEXT

None.

BACKGROUND

In the selection of personnel to be returned this article prohibits any discrimination founded on race, religion or political opinions. Born of the painful experiences of World War II, it makes use of a formula which is used in several places in the new conventions to stress the equal rights of the human beings protected. The article further provides that in the absence of the details which would be given in an "ad hoc" agreement, medical personnel are to be repatriated preferably according to their date of capture and state of health: those who have been held for a long time and those whose health had deteriorated are to have priority.

Special agreements between belligerents as to the percentage of personnel to be retained, based on the number and distribution of prisoners, are provided for. The retention of medical personnel is a complicated matter, and calls for detailed provision over and above what is actually in the convention if the new system is to work satisfactorily without giving rise to disputes. Other questions which could be decided in these agreements are:

- a. May medical personnel be retained only in proportion to the number of prisoners of their own nationality?
- b. How far are certain Articles of the Prisoners of War Convention applicable to retained personnel?



Article 31, GWS

c. Should the presence in the camps of auxiliary medical personnel lead to a reduction in the number of permanent personnel who may be retained?

d. To what extent can the need for specialists in the forces of the country of origin be taken into account?

Conscious of the importance of concluding special agreements of this nature, the 1949 Diplomatic Conference, in its Resolution 3, requested the International Committee of the Red Cross to prepare a model agreement for submission to the Powers for their approval.



Article 32, GWS

SUBSTANCE

Provides that persons designated in Article 27 who are captured may not be detained and establishes rules regarding their release and their status prior to release.

PRESENT TEXT

Persons designated in Article 27 who have fallen into the hands of the adverse Party may not be detained.

Unless otherwise agreed, they shall have permission to return to their country, or if this is not possible, to the territory of the Party to the conflict in whose service they were, as soon as a route for their return is open and military considerations permit.

Pending their release, they shall continue their work under the direction of the adverse Party; they shall preferably be engaged in the care of the wounded and sick of the Party to the conflict in whose service they were.

On their departure, they shall take with them their effects, personal articles and valuables and the instruments, arms and if possible the means of transport belonging to them.

The Parties to the conflict shall secure to this personnel, while in their power, the same food, lodging, allowances and pay as are granted to the corresponding personnel of their armed forces. The food shall in any case be sufficient as regards quantity, quality and variety to keep the said personnel in a normal state of health.

PREVIOUS TEXT

Replaces Article XII, GWS 1906, insofar as it applies to the personnel mentioned in the new article:

"Persons described in Articles 9, 10 and 11, will continue in the exercise of their functions, under the direction of the enemy, after they have fallen into his power.

"When the assistance is no longer indispensable, they will be sent back to their army or country, within such period and by such route as may accord with military necessity. They will carry with them such effects, instruments, arms, and horses as are their private property."

Article 32, GWS

Replaces Article XIII, GWS 1906:

"While they remain in his power, the enemy will secure to the personnel mentioned in Article 9 the same pay and allowance to which persons of the same grade in his own army are entitled."

Replaces Article 12, GWS 1929, insofar as it applies to the personnel mentioned in the new article:

"The persons described in Articles 9, 10 and 11 may not be detained after they have fallen into the power of the adversary."

"Unless there is an agreement to the contrary, they shall be sent back to the belligerent to whose service they are attached as soon as a way is open for their return and military exigencies permit."

"While waiting to be returned, they shall continue in the exercise of their functions under the direction of the adversary; they shall be assigned preferably to the care of the wounded and sick of the belligerent to whose services they are attached."

"At the time of their departure they may carry with them such effects, instruments, arms, and means of transport as belong to them."

Replaces Article 13, GWS 1929, insofar as it applies to personnel mentioned in the new article:

"While they remain in their power, belligerents shall secure to the personnel mentioned in Articles 9, 10 and 11, the same maintenance and quarters, pay and allowances as to persons of corresponding rank in their own armies."

"At the outbreak of hostilities the belligerents shall reach an understanding on the corresponding ranks of their sanitary personnel."

BACKGROUND

This Article continues without substantive change the provisions of the previous conventions dealing with neutral medical personnel. The place to which they return has been changed. Under the new article, this is to be their home country, or if this is not possible, the territory of the Party in whose service they were.

The return of means of transport belonging to the personnel in question is conditioned by the words "if possible"; this reference can refer only to cases of actual physical impossibility.

Article 32, GWS

Personnel awaiting repatriation continue to receive the same food, lodging, allowances and pay as are granted to corresponding personnel of the armed forces of the Detaining Power. A new provision is added which specifies that the food shall be sufficient as regards quantity, quality, and variety to keep them in a normal state of health.

Article 33, GWSSUBSTANCE

Provide that captured material of mobile medical units is to be reserved for the care of the wounded and sick; that of fixed medical establishments shall remain subject to the laws of war but may not be diverted from their purpose as long as they are required.

Provides that such material and stores shall not be intentionally destroyed.

PRESENT TEXT

The material of mobile medical units of the armed forces which fall into the hands of the enemy, shall be reserved for the care of wounded and sick.

The buildings, material and stores of fixed medical establishments of the armed forces shall remain subject to the laws of war, but may not be diverted from their purpose as long as they are required for the care of wounded and sick. Nevertheless, the commanders of forces in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are nursed in them.

The material and stores defined in the present Article shall not be intentionally destroyed.

PREVIOUS TEXT

Replaces the following articles, GWS 1906:

Article XIV. "If mobile sanitary formations fall into the power of the enemy, they shall retain their material, including the teams, whatever may be the means of transportation, and the conducting personnel. Competent military authority, however, shall have the right to employ it in caring for the sick and wounded. The restitution of the materiel shall take place in accordance with the conditions prescribed for the sanitary personnel, and, as far as possible, at the same time."

Article XV. "Buildings and materiel pertaining to fixed establishments shall remain subject to the laws of war, but can not be diverted from their use so long as they are necessary for the sick and wounded. Commanders of troops engaged in operations, however, may use them, in case of important military necessity, if, before such use, the sick and wounded who are in them have been provided for."



Article 33, GWS

Replaces the following Articles, GWS 1929:

Article 14. "If mobile sanitary formations, whatever may be their nature, fall into the power of the adversary, they shall retain their materiel, their means of transportation, and their conducting personnel.

"The competent military authority, however, shall have the right to employ them in caring for the wounded and sick; restitution shall take place in accordance with the conditions prescribed for the sanitary personnel and as far as possible at the same time."

Article 15. "Buildings and materiel of the fixed sanitary establishments of the Army shall remain subject to the laws of war, but may not be diverted from their use so long as they are necessary for the wounded and sick.

"However, commanders of troops engaged in operations may use them in case of urgent military necessity if, before such use, the wounded and sick treated there have been provided for."

BACKGROUND

The new article radically alters the provisions of the 1929 Convention relating to the material of mobile medical units. According to the 1929 Convention, if such a unit fell into the hands of the enemy its material would be returned as far as possible at the same time as the medical personnel. The new provisions, on the contrary, stipulate that this material is to remain in the hands of the capturing Party, but is to be reserved for the care of the wounded and sick. This change was largely brought about by the far-reaching changes introduced into the Geneva Convention of 1949 in regard to medical personnel who fell into enemy hands. The provision that these personnel might in future be legally retained, should logically lead to a change in the provision made for the disposal of the equipment of mobile medical units, which need no longer be restored to the country of origin. The practical obstacles to the restoring of equipment under modern war conditions also influenced the decision of the conference.

It was further suggested that the material of mobile units should be treated in the same way as that of fixed establishments. The International Committee of the Red Cross opposed this solution, which would have weakened the safeguards medical units and the wounded themselves had hitherto enjoyed; the material of the mobile units would have been liable to become war booty in the same way as that of the fixed establishments, and diverted from its proper use, whereas previously the Capturing Power could only use it for the

Article 33, GWS

benefit of the wounded. This point of view was adopted. The new article provides that the equipment of mobile units will not be subject to the laws of war, but will be used for the care of the wounded and sick.

Provisions regarding material of fixed medical establishment contained in the previous Conventions are continued without substantive change.

A new provision prohibits intentional destruction of material and stores defined in the article. This paragraph does not confine itself to protecting the material of fixed establishments against the enemy (which is done by the general provisions of the convention - and was in fact, already done in 1929); it also protects the material in cases where those holding it might be tempted to destroy it to prevent it from falling into enemy hands.



Article 33, GWS

POSSIBLE QUESTIONS

Q. Does the change in provisions regarding material of mobile medical units affect material belonging to aid societies?

A. No. Only material belonging to the medical service of the Armed Forces is affected and not that of aid societies (Article 34).

Q. Does the provision that material and stores shall not be intentionally destroyed also include buildings?

A. No. The stipulation does not cover the actual buildings, which may in certain extreme cases have to be destroyed for tactical reasons.

Article 34, GWS

SUBSTANCE

Provide that property of aid societies shall be regarded as private property and may be requisitioned only in case of urgent necessity and after the welfare of the wounded and sick has been ensured.

PRESENT TEXT

The real and personal property of aid societies which are admitted to the privileges of the Convention shall be regarded as private property.

The right of requisition recognized for belligerents by the laws and customs of war shall not be exercised except in case of urgent necessity, and only after the welfare of the wounded and sick has been ensured.

PREVIOUS TEXT

Replaces Article XVI, GWS 1906:

"The materiel of aid societies admitted to the benefits of this convention, in conformity to the conditions therein established, is regarded as private, and, as such, will be respected under all circumstances, save that it is subject to the recognized right of requisition by belligerents in conformity to the laws and usages of war."

Replaces Article 16, GWS 1929:

"The buildings of aid societies admitted to the benefits of the convention shall be regarded as private property.

"The materiel of these societies, irrespective of its location, shall likewise be regarded as private property.

"The right of requisition recognized to belligerents by the laws and customs of war shall be exercised only in case of urgent necessity and after the wounded and sick have been provided for."

BACKGROUND

The provisions of the 1929 Convention with regard to property of aid societies are continued without substantive change.

Article 35, GWS

"The civil personnel and \* transports obtained by requisition \* are subject to the general rules of international law."

GWS: Article 1, GWS 1864:

"Ambulances \* \* shall be acknowledged to be neuter, and as such shall be protected and respected so long as any sick and wounded may be therein."

BACKGROUND

Within the Geneva Convention of 1864, Article I provided that ambulances and military hospitals would be neutral so long as any sick and wounded remained therein. This neutrality would cease when occupied or held by a military (fighting) force.

The Geneva Convention of 1906, introduced, in Article 14, the provision for any sanitary formation to be used, when captured, for the care of sick and wounded. These formations were to be returned to their own Army in the same manner as were the personnel. In Article 17, provision was made to use medical transports but to return them to their own army. Requisitioned transport were made subject to international law.

In 1929, the provisions of the 1906 Convention remained in effect.

The Convention of 1949 dropped the term "neutral" but continued to provide for medical transports to be respected and protected. The principle change provides that this transport is subject to the laws of war. Previous conventions had required the eventual return of this transport to their own Armies. Transport which is requisitioned remains subject to international law.

GWS ARTICLE 36  
GWS (Sea) ARTICLE 39

SUBSTANCE

Requires medical aircraft, in addition to bearing the distinctive emblem, to fly at heights, times, and on routes specifically agreed upon between the belligerents concerned if such aircraft are to be respected and protected. Also, specifies the treatment of aircraft, and persons on board, in the event of landings on enemy territory.

PRESENT TEXTS

"Medical aircraft, that is to say, aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment, shall not be attacked, but shall be respected by the belligerents, while flying at heights, times and on routes specifically agreed upon between the belligerents concerned.

"They shall bear, clearly marked, the distinctive emblem prescribed in Article 38, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification that may be agreed upon between the belligerents upon the outbreak or during the course of hostilities.

"Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

"Medical aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

"In the event of an involuntary landing in enemy or enemy-occupied territory, the wounded and sick, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Article 24 and the Articles following." (GWS Art. 36)

"Medical aircraft, that is to say, aircraft exclusively employed for the removal of the wounded, sick and shipwrecked, and for the transport of medical personnel and equipment, may not be the object of attack, but shall be respected by the Parties to the conflict, while flying at heights, at times and on routes specifically agreed upon

between the Parties to the conflict concerned.

"They shall be clearly marked with the distinctive emblem prescribed in Article 41, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification which may be agreed upon between the Parties to the conflict upon the outbreak or during the course of hostilities.

"Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

"Medical aircraft shall obey every summons to alight on land or water. In the event of having thus to alight, the aircraft with its occupants may continue its flight after examination, if any.

"In the event of alighting involuntarily on land or water in enemy or enemy-occupied territory, the wounded, sick and shipwrecked, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Articles 36 and 37." (GWS sea Art. 39)

#### PREVIOUS TEXTS

##### Article 18 GWS 1929

"Aircraft used as means of medical transport shall enjoy the protection of the Convention during the period in which they are reserved exclusively for the evacuation of wounded and sick and the transport of medical personnel and material.

"They shall be painted white and shall bear, clearly marked, the distinctive emblem prescribed in article 19, side by side with their national colours, on their lower and upper surfaces.

"In the absence of special and express permission, flying over the firing line, and over the zone situated in front of clearing or dressing stations, and generally over all enemy territory occupied by the enemy, is prohibited.

"Medical aircraft shall obey every summons to land.

"In the event of a landing thus imposed, or of an involuntary landing in enemy territory or territory occupied by the enemy, the wounded and sick, as well as the medical



personnel and material, including the aircraft, shall enjoy the privileges of the present Convention.

"The pilot, mechanics and wireless telegraph operators captured shall be sent back, on condition that they shall be employed until the close of hostilities in the medical service only."

#### BACKGROUND

An attempt has been made in this Article to take care of the inadequacy of distinctive markings for the protection of medical aircraft under the present conditions of aerial warfare. The red cross on a white background no longer constitutes an easily recognizable emblem and therefore no longer affords effective protection. It has been provided, accordingly, that medical aircraft should be required to inform the adverse belligerent of their route, altitude, and time of flight. If these are agreed to, such aircraft continue only to be protected so far as these conditions are complied with by the belligerent concerned. Unless agreed otherwise, however, flights over enemy and enemy-occupied territory are prohibited.

The Article also stipulates that medical aircraft shall obey every summons to land, thereby providing the adverse party with a safeguard against abuse. It applies in the first place to aircraft flying over enemy or enemy-occupied territory, whether or not authorized to do so. It also applies to aircraft which are over their own territory, but close to enemy lines. If the aircraft refuses to obey, it does so at its own risk and loses the protection of the Convention. In the event the aircraft is required by the enemy to land, the medical aircraft with its occupants shall be allowed to resume its flight after inspection if the plane is being used exclusively for medical purposes. If not being used for medical purposes, i.e. if the plane is carrying munitions or has been used for military observations, the plane loses the benefit of the Convention; the enemy may seize the plane, take the wounded prisoner, and treat the medical staff and material according to the provisions of the Convention.

In case of an involuntary landing, the crew, with any sick or wounded on board, become prisoners of war and the medical personnel may be retained so far as the state of health and number of prisoners of war require.



GWS ARTICLE 37  
GWS (Sea) ARTICLE 40

SUBSTANCE

Permits medical aircraft to fly over neutral countries, subject, however, to previous agreement between the belligerents and neutral country concerned.

PRESENT TEXT

"Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land on it in case of necessity, or use it as a port of call. They shall give the neutral Powers previous notice of their passage over the said territory and obey all summons to alight, on land or water. They will be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

"The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. Such possible conditions or restrictions shall be applied equally to all Parties to the conflict.

"Unless agreed otherwise between the neutral Power and the Parties to the conflict, the wounded and sick (and shipwrecked) who are disembarked, with the consent of the local authorities, on neutral territory by medical aircraft, shall be detained by the neutral Power, where so required by international law, in such manner that they cannot again take part in operations of war. The cost of their accommodation and internment shall be borne by the Power on which they depend."

PREVIOUS TEXTS

None.

BACKGROUND

The 1929 GWS and 1907 Hague conventions did not cover the case of medical aircraft flying over a neutral country. The omission has been remedied by the present Article. Parties to the conflict may fly over the territory of neutral Powers, land thereon

in case of necessity, or use it as a port of call, subject to previous agreement between the belligerents and the neutral country concerned. The neutral country can make such agreement dependent upon any conditions it wishes to impose, provided they are identical for all belligerents. In every case, the route, altitude, and time of flight shall be explicitly agreed. Unless agreed otherwise between the neutral power and the parties to the conflict, the wounded, sick, or shipwrecked disembarked on neutral territory by medical aircraft shall be detained by the neutral power when required by international law in such a manner that they cannot again take part in operations of war.

## GWS ARTICLE 38

SUBSTANCE

Describes the distinctive emblem (the Red Cross) of the medical service of the armed forces.

PRESENT TEXT

"As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces.

"Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, those emblems are also recognized by the terms of the present Convention."

PREVIOUS TEXTSArticle 19 GWS 1929

"As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the medical service of armed forces.

"Nevertheless, in the case of countries which already use, in place of the Red Cross, the Red Crescent or the Red Lion and Sun on a white ground as a distinctive sign, these emblems are also recognized by the terms of the present Convention."

BACKGROUND

To ensure that the protection accorded by the Convention shall be thoroughly effective, personnel, vessels, material, and supplies must all bear a distinctive emblem easily recognizable by the enemy. The Article provides that this emblem shall be the red cross on a white background, which has been used for this purpose for the last 85 years. In the case of countries which already use as an emblem the red crescent or red lion and sun on a white ground, the Convention confirms established custom and provides that those emblems are also recognized by the terms of the Convention. In view of the desire to avoid undue multiplication of emblems which could only tend to diminish their protective value, the Geneva Conference refused to have the Shield of David included in the Convention as an authorized emblem.

GWS ARTICLE 39  
GWS (Sea) ARTICLE 41

SUBSTANCE

Relates to the display of the emblem as a protective sign by the medical service.

PRESENT TEXTS

"Under the direction of the competent military authority, the emblem shall be displayed on the flags, armlets and on all equipment employed in the Medical Service." (GWS Art. 39)

"Under the direction of the competent military authority, the emblem of the red cross on a white ground shall be displayed on the flags, armlets and on all equipment employed in the Medical Service.

"Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, these emblems are also recognized by the terms of the present Convention." (GWS sea Art. 41)

PREVIOUS TEXTS

Article 20 GWS 1929

"The emblem shall figure on the flags, armlets, and on all material belonging to the medical service, with the permission of the competent military authority."

BACKGROUND

The Article provides that under the direction of the competent military authority, the distinctive emblem shall be displayed on the flags and armlets and on all equipment employed in the medical service. Display of the emblem is virtually necessary if the respect required by the Convention is to be accorded by the enemy. The latter must be in a position to recognize them for what they are. There is no obligation, however, for a belligerent to mark his units with the emblem. Sometimes, in front-line positions, a commander will camouflage his medical units in order to conceal the presence or real strength of his forces. But as the enemy can respect a medical unit only if he knows of its presence, respect for

the camouflaged unit will be purely theoretical. The unit will be exposed to long-range enemy fire and will thus lose a large part of its security. But in case of occupation, for instance, the enemy, recognizing the medical unit for what it is, must obviously respect it.

The use of the phrase "under the direction of the competent military authority" shows clearly that it is the military commander who controls the emblem and can give or withhold permission to use it. The wording also shows that the military authority is at all times responsible for the use made of the emblem, must keep a constant check on it, and see that it is not improperly used by the troops or by individuals.

The question of determining who is the "competent military authority" is a private one for the armed forces of each country. If an officer exceeds his competence, he is responsible to his superiors alone. The wounded cannot be allowed to suffer thereby. An enemy cannot plead lack of competence to justify the denial of protection to a medical unit which fulfills the requirements of the Convention.



GWS ARTICLE 40  
GWS (Sea) ARTICLE 42

SUBSTANCE

Provides for identification of medical and religious personnel by means of an armlet with a red cross and a special identity card.

PRESENT TEXT

"The personnel designated in Article 24 and in Articles 26 and 27 (Articles 36 and 37 of GWS sea) shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

"Such personnel, in addition to wearing the identity disc mentioned in Article 16 (Article 19 of GWS sea), shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the surname and first names, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

"The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the High Contracting Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

"In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss, they shall be entitled to receive duplicates of the cards and to have the insignia replaced.

PREVIOUS TEXTS

"The personnel protected in pursuance of articles 9

(paragraph 1), 10 and 11, shall wear, affixed to the left arm, an armlet bearing the distinctive sign, issued and stamped by a military authority.

"The personnel mentioned in article 9, paragraphs 1 and 2 shall be provided with a certificate of identity, consisting either of an entry in their small book (paybook) or a special document.

"The persons mentioned in articles 10 and 11 who have no military uniform shall be furnished by the competent military authority with a certificate of identity, with photograph, certifying their status as medical personnel.

"The certificates of identity shall be uniform and of the same pattern in each army.

"In no case may the medical personnel be deprived of their armlets or the certificates of identity belonging to them.

"In case of loss they have the right to obtain duplicates."

#### BACKGROUND

If medical and religious personnel are to be respected and protected, the enemy must be able to recognize them. An attempt has been made in this Article to clarify the provisions regarding identification. Personnel protected by the Convention shall wear, affixed to their left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority. The latter is particularly essential in order to ensure that the armlet is worn only by those who are entitled to do so under the Convention. This condition is an essential one, admitting of no exception.

In addition to the armlet bearing a red cross, provision has been made for a special pocket-size, water-resistant identity card for all personnel exclusively engaged in protected activities. The identity card is to state in what capacity the bearer is entitled to protection under the Convention and is to be uniform throughout the same armed forces. As far as possible, it is to be of a similar type in the armed forces of all the contracting parties, and a model card is annexed to the Convention to serve as a guide.

Confiscation by the adverse party of the identity card and armlet are prohibited. Medical personnel may keep their identity papers and wear the armlet in all circumstances. In both World Wars medical personnel sometimes had their armlets and cards taken from them. This was a convenient way for the capturing state to evade its obligations. Such practices are strictly forbidden; the special insignia and identity cards of medical personnel can only be withdrawn by the military authorities of their own armed forces.

GWS

## ARTICLE 41

SUBSTANCE

Provides for the identification of temporary medical personnel by means of an armband with a small red cross and special notation on military identification cards.

PRESENT TEXT

"The personnel designated in Article 25 shall wear, but only while carrying out medical duties, a white armband bearing in its centre the distinctive sign in miniature; the armband shall be issued and stamped by the military authority.

"Military identity documents to be carried by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and their authority for wearing the armband."

PREVIOUS TEXTS

None.

BACKGROUND

The purpose of the Article is to provide some permanent sign to make it possible to recognize and protect temporary medical staff as defined in Article 25. The idea of creating a new emblem was rejected, on the ground that the multiplication of symbols would be likely to lead to misunderstanding, and also because all the designs proposed were liable to be confused with signs already in use in the various armies to indicate rank and service. The Convention therefore provides that temporary medical personnel should wear a white armband with a red cross emblem of a smaller size.

As personnel of this kind will be treated as prisoners of war if they fall into the hands of the enemy, a special identity card for them would not serve any useful purpose. It is therefore provided simply to make a special entry on their regular military identity cards, indicating the nature of the medical training they have undergone, the temporary character of their duties, and their authority to wear an armband. The effect of this will be to authorize the enemy to make use of their services in prisoner of war camps, preferably for duties of a medical nature.

GWS

## ARTICLE 42

SUBSTANCE

Relates to the display of the Red Cross flag over medical units and establishments.

PRESENT TEXT

"The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities.

"In mobile units, as in fixed establishments, it may be accompanied by the national flag of the Party to the conflict to which the unit or establishment belongs.

"Nevertheless, medical units which have fallen into the hands of the enemy shall not fly any flag other than that of the Convention.

"Parties to the conflict shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to the enemy land, air or naval forces, in order to obviate the possibility of any hostile action."

PREVIOUS TEXTSArticle 22 GWS 1929

"The distinctive flag of the Convention shall be hoisted only over such medical formations and establishments as are entitled to be respected under the Convention, and with the consent of the military authorities. In fixed establishments it shall be, and in mobile formations it may be, accompanied by the national flag of the belligerent to whom the formation or establishment belongs.

"Nevertheless, medical formations which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Convention.

"Belligerents shall take the necessary steps, so far as military exigencies permit, to make clearly visible to enemy forces, whether land, air, or sea, the distinctive emblems indicating medical formations and establishments, in order to avoid the possibility of any offensive action."



BACKGROUND

The Article provides that the distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities. In fixed establishments and mobile units it may be accompanied by the national flag of the party to the conflict to which the establishment or unit belongs. This is a change from the 1929 convention which, instead of making it permissive, required that in fixed establishments the national flag accompany the Red Cross flag. Medical units which have fallen into the hands of the enemy, however, are permitted only to fly the Red Cross flag. In order to prevent the possibility of hostile action, parties to the conflict are required, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to enemy land, naval, or air forces.



## GWS

## ARTICLE 43

SUBSTANCE

Relates to the flags to be displayed by medical units of neutral countries which have been authorized to loan their services to a belligerent.

PRESENT TEXT

"The medical units belonging to neutral countries, which may have been authorized to lend their services to a belligerent under the conditions laid down in Article 27, shall fly, along with the flag of the Convention, the national flag of that belligerent, wherever the latter makes use of the faculty conferred on him by Article 42.

"Subject to orders to the contrary by the responsible military authorities, they may, on all occasions, fly their national flag, even if they fall into the hands of the adverse Party."

PREVIOUS TEXTS

## Article 23 GWS 1929

"The medical units belonging to neutral countries which shall have been authorized to lend their services under the conditions laid down in article 11, shall fly, along with the flag of the Convention, the national flag of the belligerent to whose army they are attached.

"They shall also have the right, so long as they shall lend their services to a belligerent, to fly their national flag.

"The provisions of the second paragraph of the preceding article are applicable to them."

BACKGROUND

Medical units of a neutral country loaned to a belligerent are required to fly, along with the flag of the Convention, the national flag of the belligerent to which they are attached if the belligerent commander has decided that his medical units shall do so. Subject to orders to the contrary by the responsible military authorities, they may on all occasions fly their national flag, even if they fall into the hands of the adverse party. The latter is contrary to the provisions of the 1929 convention which stipulated that such medical units shall fly only the flag of the convention in the event of falling into the hands of the adverse party. Unlike the provision in the case of the national flag of the belligerent, the proviso "subject to orders to the contrary by the responsible military authorities" does not mean that the belligerent can decide whether or not neutral units generally are to fly their own flags. It implies a restriction made, in particular cases and for a limited period only, for tactical reasons.

SUBSTANCE

Sets forth the conditions under which the Red Cross emblem may be used.

PRESENT TEXT

"With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the Red Cross on a white ground and the words 'Red Cross', or 'Geneva Cross' may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 38, second paragraph, in respect of the countries which use them. The National Red Cross Societies and other Societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

"Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.

"The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the Red Cross on a white ground.

"As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded and sick."

PREVIOUS TEXTSArticle 24 GWS 1929

"The emblem of the red cross on a white ground and the words 'Red Cross' or 'Geneva Cross' shall not be used, either in time of peace or in time of war, except to protect or to indicate the medical formations and establishments and the personnel and material protected by the Convention.

"The same shall apply, as regards the emblems mentioned in article 19, paragraph 2, in respect of the countries which use them.

"The Voluntary Aid Societies mentioned in article 10, may, in accordance with their national legislation, use the distinctive emblem in connexion with their humanitarian activities in time of peace.

"As an exceptional measure, and with the express authority of one of the national societies of the Red Cross (Red Crescent, Red Lion and Sun), use may be made of the emblem of the Convention in time of peace to mark the position of aid stations exclusively reserved for the purpose of giving free treatment to the wounded or the sick."

#### BACKGROUND

The essential provisions of Article 24 of the 1929 convention have been incorporated in this Article. An attempt has been made, however, to establish a clearer distinction between the use of the distinctive emblem which has a protective value during military operations and the popular emblem used by national red cross societies for purposes of identification. In order that the protective emblem shall retain its full value, it is provided that it can only be used in time of peace by national red cross societies for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention, and the emblem must be small in size and may not be placed on armlets or on the roofs of buildings.

In view of the fact that international red cross organizations are required to perform their duties everywhere and in all circumstances, a new provision has been inserted in the present Convention permitting such organizations to make use of the Red Cross emblem at all times, thus remedying a serious defect in the 1929 convention. The part played by these bodies in the execution of all the Geneva Conventions is far too important to contemplate the possibility of their being deliberately exposed to the hazards of war.

As an exceptional measure, in conformity with national legislation and with the express permission of the National Red Cross Societies, the emblem may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned for the purpose of giving free treatment to the wounded or sick.



Article 45, GWS  
Article 46, GWS Sea

SUBSTANCE

Provides for detailed execution of the Convention and for the general application of its principals in unforeseen cases.

PRESENT TEXTS

Article 45

Each Party to the conflict, acting through its commanders-in-chief, shall ensure the detailed execution of the preceding Articles and provide for unforeseen cases, in conformity with the general principles of the present Convention.

Article 46

Each Party to the conflict, acting through its Commanders-in-Chief, shall ensure the detailed execution of the preceding Articles and provide for unforeseen cases, in conformity with the general principles of the present Convention.

PREVIOUS TEXTS

Article 19 of the 1907 Hague Convention

The commanders-in-chief of the belligerent fleets must see that the above articles are properly carried out; they will have also to see to cases not covered thereby, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

Article 26 of the 1929 Red Cross Convention

It shall be the duty of the commanders-in-chief of the belligerent armies to provide for the details of execution of the foregoing articles, as well as for unforeseen cases, in accordance with the instructions of their respective Governments, and conformably to the general principles of this convention.

BACKGROUND

Arts. 46 GWS-Sea and Art. 45 of the GWS Convention, differ from the old Art. 19 only in that they place the obligation for execution of the Convention on the parties to the conflict, acting through their commanders-in-chief, instead of the commanders directly.

Article 46, GWS  
Article 47, GWS Sea

SUBSTANCE

Prohibits reprisals against all persons, personnel and equipment  
protected by the Convention.

PRESENT TEXTS

Article 46

Reprisals against the wounded, sick, personnel, buildings or  
equipment protected by the Convention are prohibited.

Article 47

Reprisals against the wounded, sick and shipwrecked persons,  
the personnel, the vessels or the equipment protected by the Convention  
are prohibited.

PREVIOUS TEXTS

None

BACKGROUND

Art. 2 of the 1929 Geneva POW Convention and Art. 13 of the GPW  
Convention contain corresponding provisions regarding prisoners of war.  
Although the provisions of GWS and GWS Sea as a whole might lead one to  
believe that they ensured adequate protection in all cases. WW II  
experience has shown sufficient deplorable events to justify inclusion  
of this Article.



## GWS ARTICLE 53

SUBSTANCE

Misuse of the distinctive emblem.

PRESENT TEXT

"The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation 'Red Cross' or 'Geneva Cross', or any sign or designation constituting an imitation thereof whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.

"By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention, the use by private individuals, societies or firms, of the arms of the Swiss Confederation, or of marks constituting an imitation thereof, whether as trade-marks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss sentiment shall be prohibited at all times.

"Nevertheless, such High Contracting Parties as were not party to the Geneva Convention of July 27, 1929, may grant to prior users of the emblems, designations, signs or marks designated in the first paragraph, a time limit not to exceed three years from the coming into force of the present Convention to discontinue such use, provided that the said use shall not be such as would appear, in time of war, to confer the protection of the Convention.

"The prohibition laid down in the first paragraph of the present Article shall also apply, without effect on any rights acquired through prior use, to the emblems and marks mentioned in the second paragraph of Article 38."

PREVIOUS TEXTSArticle 28 GWS 1929

"The Governments of the High Contracting Parties whose legislation is not at present adequate for the purpose, shall adopt or propose to their legislatures the measures necessary to prevent at all times:

- (a) the use of the emblem or designation 'Red Cross' or 'Geneva Cross' by private individuals or associations, firms or companies, other than those entitled thereto under the present Convention, as well as the use of any sign or designation constituting an imitation, for commercial or any other purposes;

- (b) by reason of the compliment paid to Switzerland by the adoption of the reversed Federal colours, the use by private individuals or associations, firms or companies of the arms of the Swiss Confederation, or marks constituting an imitation, whether as trade-marks or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment.

"The prohibition indicated in (a) of the use of marks or designations constituting an imitation of the emblem or designation of 'Red Cross' or 'Geneva Cross', as well as the prohibition in (b) of the use of the arms of the Swiss Confederation or marks constituting an imitation, shall take effect as from the date fixed by each legislature, and not later than five years after the coming into force of the present Convention. From the date of such coming into force, it shall no longer be lawful to adopt a trade-mark in contravention of these rules."

#### BACKGROUND

As indicated in Article 44, the red cross on a white ground can be used in two entirely different senses. When it appears on persons or property which the Convention states shall be respected, the sign has protective value; when it merely indicates that a person or thing is connected in some way with the Red Cross, but not in the sense of being entitled to the protection of the Convention, the sign is indicative. A distinction must therefore be drawn between abuse of the protective sign and abuse of the indicative sign. The first, in time of war, is far the more serious, because it may endanger human lives. The fact that buildings in a war zone display the Red Cross sign when they are not entitled to do so, may compromise the security of hospitals which display it legally and undermine the respect due to the Convention. However, misuse of the purely indicative sign must also be prevented as it does serious harm to the Red Cross movement and diminishes the prestige of the emblem. Article 53 is primarily intended to prohibit misuse of the indicative sign, e. g. its use for commercial purposes; it is, however, aimed as well at abuse of the protective sign in wartime.

In addition to prohibiting misuse of the Red Cross emblem, protection has been extended to the designations "Red Cross" and "Geneva Cross" which from the official title of the great humanitarian institution known as the Red Cross. Unauthorized use of imitations of the emblem and title are likewise forbidden.

Use of the emblem is forbidden to everyone not expressly authorized by the Convention. Article 44 gives a list of those entitled to use it. Among organizations, only Red Cross organizations and societies and other recognized relief societies are mentioned. Private individuals may not use it. The sole exception, accorded only with the express permission of the National Red Cross, is to identify an aid post or motor ambulance. Governments themselves may only employ the sign to identify the staff and material of their medical services. Also, apart from authorized cases, use of the emblem is forbidden no matter what the object of such use. It means that the emblem cannot be utilized, except as provided for in the Convention, for any objective, however commendable, or for any other humanitarian purpose.

As regards time, in the first place, the prohibition is valid at all times, in peacetime as in war. Secondly, unauthorized uses are required to disappear irrespective of the date of their adoption. This requirement was already contained in the 1906 and 1929 conventions, but some states, following constitutional principles when legislating, made an exception in the case of rights acquired by prior use. The provision now requires that trade-marks and commercial marks incorporating the Red Cross must disappear, even if they have been in use for a century or more.

Article 53 also prohibits misuse of the white cross on a red ground. The protection therefor is provided not only because of the tribute paid to Switzerland by the adoption of the reversed Federal colours, but particularly because of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention. The principle object of the provision is to preserve the Red Cross sign from every sort of infringement, even indirect, and prevent the deception practiced by firms which exploit the resemblance between the two emblems in order to mislead the public. The unauthorized use of the Red Cross is prohibited irrespective of the date of its adoption, but the phrase does not occur in connection with the prohibited misuse of the Swiss arms. The question arises of whether this allows states to reserve the vested rights of those already using the white cross on a red ground. The answer would appear to be in the negative. The present wording is absolute, and an explicit reservation would have been needed to make an exception in the case of prior users.

The provisions prohibiting misuse of the Red Cross sign and of the arms of Switzerland will take immediate effect upon the entry into force of the Convention for each country in the case of all states

party to the 1929 Convention. The very few states which were not party to the 1929 Convention may grant users of the Red Cross sign three years grace provided that during this period the signs and emblems used are not such as would appear, in time of war, to confer the protection of the Convention. Accordingly, the only signs which may remain in use for a limited period are those of a purely indicative type.

Unlawful use of the alternative emblems of the red crescent and red lion and sun is also prohibited in all states party to the Convention. The scope of the prohibition is the same as in the case of the Red Cross with one essential difference. The prohibition concerning the two alternative emblems does not affect any rights acquired through prior use; it applies only to persons who claim the right to use the emblems after the Convention has come into force.



COM. ART. 54, GWS  
45, GWS Sea

COMMON ARTICLES

54, GWS  
45, GWS Sea

SUBSTANCE

Provides that the Contracting Parties shall take the necessary measures to prevent and repress the abuse of distinctive signs.

PRESENT TEXT

"The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53."

PREVIOUS TEXTS

None.

(See papers on Red Cross Emblem and Legislation which May be Required.)



Annex I, GWSSUBSTANCE

Annex I is a model draft agreement which Parties may implement for the purpose of setting up hospital zones or localities reserved for the wounded and sick under the provisions of Article 23.

PREVIOUS TEXT

None.

BACKGROUND1. Drafting History

The idea of hospital localities was first proposed in 1870, the time of the Franco-Prussian War, by Henry Dunant, the founder of the Red Cross, but it was not followed up owing to military events. The following year, at the time of the revolt of the Commune, Dunant first advanced the idea of having safety zones set up as places of refuge for the civilian population in Paris.

In 1929, General Georges Saint-Paul of the French Medical Service drew up a plan for setting up places of refuge for military and civilian wounded and sick and certain other civilians whose weakness placed them on the same footing as the sick (children, old people, etc). In 1931, he also founded an association for the purpose of giving publicity to the plan and working toward its realization.

In 1934, a commission of medical and legal experts meeting in Monaco drew up a draft convention dealing with respect for human life in wartime. This document, which is known as the Monaco Draft, contains important provisions concerning hospital localities and safety zones. A contemplated Diplomatic Conference to approve this draft was never held and the Monaco texts were eventually handed over to the International Committee of the Red Cross.

A commission of experts convened by the International Committee of the Red Cross in 1936, considered that some progress might be made, at least as far as hospital zones were concerned; but pointed out that the assistance of military experts would be essential. The Commission felt that it was first necessary to concentrate on hospital zones for members of the Armed Forces and that the wider problem of safety zones for civilians could be tackled later with a greater chance of success.

Annex I, GWS

A commission of military experts and international jurists met in October 1938 and drew up a Draft Convention (known as the 1938 Draft) for the creation of hospital zones and localities for wounded and sick members of the Armed Forces. This draft received wide distribution but was never officially adopted due to the outbreak of World War II.

Neutralized zones had been successfully established at Madrid in 1936 and at Shanghai in 1937. The Red Cross proposed on several occasions during World War II that belligerents conclude agreements based on the 1938 Draft but this proposal met with little success although a number of states sent replies which were favorable in principle.

In 1945, the Red Cross took the 1938 Draft as its basis in the preparatory work undertaken in connection with the revision and development of the Geneva Conventions. When the 1947 Conference of Governmental Experts showed that States were not inclined to adopt clauses of a mandatory nature in this matter, the International Committee of the Red Cross drafted two articles, for insertion in the First and Fourth Conventions respectively, recommending that the Powers should establish hospital zones and safety zones. To encourage setting up such zones, it proposed that a Draft agreement, which States could take as a model when establishing and recognizing the zones, should be annexed to the two Conventions.

The present Article 23, GWS, together with the Draft Agreement was approved with no change of any importance, by the XVIIth International Red Cross Conference, and later by the Diplomatic Conference in 1949. The latter separated the Draft Agreement, which had previously been common to the First and Fourth Conventions, into two distinct documents, one referring to hospital zones for wounded and sick members of the Armed Forces, and the other dealing with hospital zones for wounded and sick civilians and safety zones for certain categories of the population.

## 2. Analysis of Articles

Annex I has only been proposed to States as a model draft agreement relating to hospital zones and localities. But the fact that it was carefully drafted at the Diplomatic Conference and that the latter finally adopted it, gives it a very real value. Its stipulations should therefore be taken as a basis without further discussion, whenever a hospital zone is to be established.

Annex I, GWS

Article 1 determines the categories of persons entitled to reside in hospital zones. In addition to persons named in Article 23, GWS, persons whose permanent residence is within such zones shall have the right to stay there.

Article 2 prohibits persons residing in the zone from performing work directly connected with military operations or the production of war material. The former has been defined in Article 50, GPW, which authorizes the employment of prisoners of war on certain classes of work including agriculture, certain specified industries, transport and handling of stores not military in character or purpose, commercial business and arts and crafts, domestic service and public utility services having no military character or purpose. As for the expression "production of war material," this is one of the points which states might deal with in greater detail when bringing the Agreement into force.

Article 3 prohibits access to all persons who have no right of residence or entry. This will, no doubt, require a fairly large police force since under certain circumstances, a considerable number of unauthorized persons may try to enter the zones.

Article 4 specifies conditions which hospital zones must fulfill. They must only occupy a small part of the country's territory, be thinly populated in relation to the possibilities of accommodation, be remote from military objectives or large industrial or administrative establishments and must not be situated in areas which, according to every probability, may become important for the conduct of the war.

Article 5 provides that hospital zones must fulfill two obligations:

a. Military transport is excluded. Both the 1938 Draft and the Monaco Draft authorized military convoys in Transit to make temporary use of lines of communication and transport crossing a hospital zone. Certain experts pointed out that the halting of a convoy in a hospital zone might give rise to abuses and disputes, therefore such utilization of the zone was excluded entirely when drawing up the Draft Agreement. The article does not appear to exclude the passage of convoys of civilians in transit but this practice is not to be recommended in view of the difficulties to which it may give rise.

b. Zones shall not be defended by military means. No resistance may be offered to enemy forces penetrating to the boundaries of a zone nor may batteries of anti-aircraft artillery be located in the zone. The phrase, "by military means" implies, however, that zones may be defended against other dangers. They will, for example, possess a police force capable of maintaining law and order.



Annex I, GWS

There is no mention of the flight of aircraft over hospital zones. In the absence of any special provision, it must be assumed that both friendly and enemy aircraft may fly over them.

Article 6 requires hospital zones to be marked by the red cross emblem. Illumination at night is optional because of the possibility of providing enemy aircraft with landmarks which would assist them in attacking military objectives.

Article 7 provides for notification and recognition of hospital zones before and/or during hostilities.

Article 8 provides that a Power recognizing a zone instituted by the adverse Party shall be able to demand control by one or more Special Commissions to ascertain if the zone fulfills the conditions and obligations stipulated in the agreement. Members of Special Commissions shall have free access to the zones.

Article 9 specifies that if the Special Commissions note facts contrary to the stipulations of the Agreement, they will notify both the Power governing the zone and the Power which has recognized it. If the Power responsible for the zone does not comply with the warning within five days, the adverse Power may declare that it is no longer bound by the Agreement in respect to that zone.

Article 10 gives general directions for the setting up of the Special Commissions and the nomination of their members. Because of the general nature of this article, agreements to be concluded should lay down the exact procedure in regard to these two matters.

Article 11 provides that in no circumstances may hospital zones be attacked. There is also a positive obligation; they are to be protected and respected at all time by the Parties to the conflict. The corresponding Article in the draft submitted to the XVIIth International Red Cross Conference included a second paragraph, according to which, enemy forces reaching the outskirts of a zone could cross it without halting there. This provision has been dropped.

Article 12 requires an occupying State to continue to respect hospital zones and to utilize them as such. The Occupying Power may, however, modify the purpose to which the zones are put. The reference here is to persons admitted to the zones and sheltered there. The Occupying Power will be free to place its own wounded in a hospital zone, after making suitable arrangements for those who were there at the time of occupation. But it is not entitled to expel the local population.

Annex I, GWS

Article 13 provides that the Agreement shall apply to localities established by the belligerents as well as to zones. There is no essential difference between the two. "Locality" is taken to mean a specific place of limited area, in which there are generally buildings. The term "zone" is used to describe a relatively large stretch of countryside and may include one or more localities.



Annex I, GWS

POSSIBLE QUESTIONS

Q. What would be the consequence of the withdrawal of recognition from a hospital zone under Article 9 of the Agreement?

A. It would put an end to the privileged position of the zone, but it would not deprive the persons and property there of protection. The wounded and sick, the local population, and medical units, establishments, personnel and equipment would still be protected under the Geneva Convention.

ANALYSIS OF  
CONVENTION FOR THE AMELIORATION OF  
THE CONDITION OF THE WOUNDED, SICK,  
AND SHIPWRECKED MEMBERS OF ARMED  
FORCES AT SEA

Article 4, GWS Sea

SUBSTANCE

Limits application of GWS Sea to forces (wounded, sick and shipwrecked) on board ship. Makes GWS applicable as soon as forces are put ashore.

PRESENT TEXT

Article 4

In case of hostilities between land and naval forces of Parties to the conflict, the provisions of the present Convention shall apply only to forces on board ship.

Forces put ashore shall immediately become subject to the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

PREVIOUS TEXT

Article 22 of the 1907 Hague Convention

In case of operations of war between land and sea forces of the belligerents, the provisions of the present Convention do not apply except between the forces actually on board ship.

BACKGROUND

Art. 4 para. 1 is identical in substance with Art. 22. New para. 2 makes GWS specifically complementary to GWS Sea. Article 4 which states that it is applicable to forces on board ships is further qualified by the provision of Article 12, GWS Sea, which limits the protections of this Convention to sick, wounded and shipwrecked at sea. Thus, reading these two articles together, it is obvious that GWS has no applicability to forces on board military transports.

The duty to assist shipwrecked, wounded and sick personnel is set forth in Article 18 which provides that Parties to the conflict shall after each engagement take all possible measures to search for and collect such personnel. Thus, the duty to assist does not exist in all cases and does not extend to all personnel. For example, there is no duty upon the combatants during the actual fighting to collect such personnel, nor would it apparently be necessary after an engagement for a belligerent to require that all of its forces engage in the collection of wounded and sick, but rather only an adequate number would have to be employed.

D

Article 14, GWS Sea

SUBSTANCE

Recognizes right of a belligerent party's warships with adequate medical facilities to demand surrender of wounded, sick and shipwrecked aboard a vessel if in fit state to be moved.

PRESENT TEXT

Article 14

All warships of a belligerent Party shall have the right to demand that the wounded, sick or shipwrecked on board military hospital ships, and hospital ships belonging to relief societies or to private individuals, as well as merchant vessels, yachts and other craft shall be surrendered, whatever their nationality, provided that the wounded and sick are in a fit state to be moved and that the warship can provide adequate facilities for necessary medical treatment.

PREVIOUS TEXT

Article 12 of the 1907 Hague Convention

Any warship belonging to a belligerent may demand that sick, wounded, or shipwrecked men on board military hospital ships, hospital ships belonging to relief societies or to private individuals, merchant ships, yachts, or boats, whatever the nationality of these vessels, should be handed over.

BACKGROUND

The Art. continues to recognize the right of belligerent warships to demand surrender of the wounded and sick. It adds, however, new important humanitarian qualifications, namely that the wounded and sick must be in a fit state to be moved and that the warship to which they are to be moved can provide adequate facilities for necessary medical treatment.

D

Article 15, GWS Sea

SUBSTANCE

Provides that when wounded, sick and shipwrecked persons are taken on board a neutral warship or military aircraft, it shall be ensured, where so required by international law, that they take no further part in operation of war.

PRESENT TEXT

Article 15

If wounded, sick or shipwrecked persons are taken on board a neutral warship or a neutral military aircraft, it shall be ensured, where so required by international law, that they can take no further part in operations of war.

PREVIOUS TEXT

Article 13 of the 1907 Hague Convention

If sick, wounded, or shipwrecked persons are taken on board a neutral warship, every possible precaution must be taken that they do not again take part in the operations of war.

BACKGROUND

Art. 15 restates an old principal of international law. The words "neutral military aircraft" have been added due to modern development in warfare. The reason behind the addition of the phrase "where so required by international law" is as follows: The 1907 Convention applied to members of the armed forces only, the new convention includes civilian crews etc., among the protected categories. There is no obligation upon neutrals under the laws of neutrality to intern civilian crewmen or other civilians of a belligerent country, or to insure in any other manner that they cannot take part in the operations of war. It was feared, that this exception, as well as others established by precedent to the principle embodied in Art. 15 might be set aside without the qualifying phrase.

Final Record II A, 61, 107.

D



Article 17, GWS SeaSUBSTANCE

Provides that where required by international law, wounded sick or shipwrecked persons landed in neutral ports shall be guarded by the neutral Power to prevent such persons from taking part in operations of the war. Costs of internment shall be borne by the Power on whom such persons depend.

PRESENT TEXT

## Article 17

Wounded, sick or shipwrecked persons who are landed in neutral ports with the consent of the local authorities, shall, failing arrangements to the contrary between the neutral and the belligerent Powers, be so guarded by the neutral Power, where so required by international law, that the said persons cannot again take part in operations of war.

The costs of hospital accommodation and internment shall be borne by the Power on whom the wounded, sick or shipwrecked persons depend.

PREVIOUS TEXTArticle 15 of the 1907 Hague Convention

The shipwrecked, sick, or wounded who are landed at a neutral port with the consent of the local authorities, must, unless an arrangement is made to the contrary, between the neutral State and the belligerent State, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded persons belong.

Article 10 of the 1899 Hague Convention (III)

This Article was excluded from all ratifications of the Convention. The shipwrecked, wounded, or sick, who are landed at a neutral port with the consent of the local authorities, must, failing a contrary arrangement between the neutral State and the belligerents, be guarded by the neutral State, so that they cannot again take part in the military operations. The expenses of tending them in hospital and internment shall be borne by the State to which the shipwrecked, wounded, or sick belong.

BACKGROUND

Article 17 is a rephrasing of Art. 15 of the 1907 Convention. The phrase "where so required by international law" was added for the same reasons as the introduction of the same phrase in Article 15.

Article 18, GWS Sea

SUBSTANCE

Requires search, collection and care for casualties after each engagement, protection from ill treatment, provision for adequate care. Encourages suspension of hostilities locally to effect this.

PRESENT TEXT

Article 18

After each engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, the Parties to the conflict shall conclude local arrangements for the removal of the wounded and sick by sea from a besieged or encircled area and for the passage of medical and religious personnel and equipment on their way to that area.

PREVIOUS TEXT

Article 16 para 1 of the 1907 Hague Convention

After each engagement, the two belligerents, so far as military interests permit, shall take steps to look for the shipwrecked, sick, and wounded, and to protect them, as well as the dead, against pillage and ill-treatment.

BACKGROUND

Article 18 is similar to Art. 15 of the GSW. It differs from old Art. 16/1 in that it imposes a more definite obligation on the parties "to take all possible measures" to search for and collect the wounded, sick and shipwrecked, and in addition to protecting them against pillage and ill-treatment, to ensure their adequate care. The second paragraph is new and is based on the experience gained in the last war which has demonstrated the usefulness of the possibility of evacuating the wounded and sick from a besieged or encircled zone by sea, as well as arranging for passage of medical and religious personnel and equipment from or to such a zone. The new second paragraph makes this possible by means of concluding local arrangements. The text of the Article prohibits any form of adverse discrimination and ensures that all wounded and sick, whether friend or foe, shall be treated on a footing of equality. (Final Record, II A, P. 191)

D

Article 22, GWS Sea

SUBSTANCE

Accords protection and freedom from attack or capture to military hospital ships, as defined, on condition of timely notification of names and characteristics.

PRESENT TEXT

Article 22

Military hospital ships, that is to say, ships built or equipped by the Powers specially and solely with a view to assisting the wounded, sick and shipwrecked, to treating them and to transporting them, may in no circumstances be attacked or captured, but shall at all times be respected and protected, on condition that their names and descriptions have been notified to the Parties to the conflict ten days before those ships are employed.

The characteristics which must appear in the notification shall include registered gross tonnage, the length from stem to stern and the number of masts and funnels.

PREVIOUS TEXT

Article 1 para. 1 of the 1907 Hague Convention

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assisting the wounded, sick and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

Article 1 para 1 of the 1899 Hague Convention (III)

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely for the purpose of assisting the wounded, sick or shipwrecked, and the names of which shall have been communicated to the belligerent Powers at the beginning or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

BACKGROUND

Art. 22 is basically a rephrasing of the old Art. 1/1. The definition is, however more specific in order to distinguish between hospital ships and mere lifeboats; the ships must not only be equipped to assist the sick and wounded, but also to treat and transport them. Art. 22 specifies that not only the names, but also the principal characteristics of the hospital ship be communicated to the parties to the conflict, and that this notification must be made 10 days before the ship is employed. All these provisions are designed to assure complete protection to these ships.

D

Article 23, GWS Sea

SUBSTANCE

Requires protection of medical establishments ashore from bombardment or attack from sea.

PRESENT TEXT

Establishments ashore entitled to the protection of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, shall be protected from bombardment or attack from the sea.

PREVIOUS TEXT

None.

BACKGROUND

The 1907 Hague Convention protected hospital ships, and the 1929 Geneva Convention protected medical establishments ashore, but neither Convention protected both. It was therefore considered advisable to include new provisions in the GWS and GWS Sea protecting medical establishments ashore from bombardment from the sea (Art. 23 GWS Sea) and hospital ships from attack from land (GWS Art. 20).

D



Article 24, GWS Sea

SUBSTANCE

Provides that hospital ships of recognized relief societies and private individuals shall have the same protection as military hospital ships and be exempt from capture if they have fulfilled the necessary prerequisites.

PRESENT TEXT

Article 24

Hospital ships utilized by National Red Cross Societies, by officially recognized relief societies or by private persons shall have the same protection as military hospital ships and shall be exempt from capture, if the Party to the conflict on which they depend has given them an official commission and in so far as the provisions of Article 22 concerning notification have been complied with.

These ships must be provided with certificates from the responsible authorities, stating that the vessels have been under their control while fitting out and on departure.

PREVIOUS TEXT

Art. 2 of the 1907 Hague Convention

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall be likewise respected and exempt from capture if the belligerent power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships must be provided with a certificate from the competent authorities declaring that the vessels have been under their control while fitting out and on final departure.

Art. 2 of the 1899 Hague Convention

Hospital ships, equipped wholly or in part at the cost of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, provided the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships should be furnished with a certificate from the competent authorities, declaring that they have been under their control while fitting out and on final departure.



Article 24, GWS Sea

BACKGROUND

Art. 24 is practically identical with the old provisions, except that National Red Cross Societies have been specifically designated as officially recognized relief societies, and that notification is subject to the same requirements made for military hospital ships in Art. 22.

Article 25, GWS Sea

SUBSTANCE

Provides that hospital ships belonging to recognized relief societies and private individuals of neutral countries shall have the same protection as military hospital ships provided they have placed themselves under the control of one of the Parties to the conflict.

PRESENT TEXT

Hospital ships utilized by National Red Cross Societies, officially recognized relief societies, or private persons of neutral countries shall have the same protection as military hospital ships and shall be exempt from capture, on condition that they have placed themselves under the control of one of the Parties to the conflict, with the previous consent of their own governments and with the authorization of the Party to the conflict concerned, in so far as the provisions of Article 22 concerning notification have been complied with.

PREVIOUS TEXT

Article 3 of the 1907 Hague Convention

Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries shall be respected and exempt from capture, on condition that they are placed under the control of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their names to his adversary at the commencement of or during hostilities, and in any case, before they are employed.

Article 3 of the 1899 Hague Convention

Hospital ships, equipped wholly or in part at the cost of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to whom they belong has given them an official commission and notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

BACKGROUND

As Art. 24, this provision is practically identical with the old provision, with the same exceptions: Same notification as for military hospital ships, and National Red Cross Societies officially recognized.

Article 26, GWS SeaSUBSTANCE

Provides that the protection of Hospital Ships mentioned in Articles 22, 24 and 25 shall apply regardless of tonnage and wherever they are operating. However, the Parties to the conflict shall endeavor to use ships of over 2,000 gross tons.

PRESENT TEXT

The protection mentioned in Articles 22, 24 and 25 shall apply to hospital ships of any tonnage and to their lifeboats, wherever they are operating. Nevertheless, to ensure the maximum comfort and security, the Parties to the conflict shall endeavour to utilize, for the transport of wounded, sick and shipwrecked over long distances and on the high seas, only hospital ships of over 2,000 tons gross.

PREVIOUS TEXT

None.

BACKGROUND

Art. 26 is new. It is the result of the differences of opinion between the United States and several of the smaller countries as to tonnage requirements for hospital ships. The U. S. was in favor of a 2,000 ton requirement, but was willing to agree to 1,000 tons, realizing that it would be difficult for several of the smaller countries to maintain hospital ships of more than 1,000 tons in sufficient numbers. The Committee (ICRC) emphasized that it did not wish to limit the protection for hospital ships to ships of any particular tonnage, it was however fully aware of the difficulty of identifying smaller ships and that the visibility of vessels of over 2,000 tons was a large factor not only in their security, but also in ensuring the necessary equipment for comfort and treatment of the wounded and sick. It was therefore agreed, that vessels of all tonnage should be entitled to the protection granted by the Convention, but that the parties should strive to employ only vessels of over 2,000 tons gross for transportation of the sick and wounded over long distances and on the high seas.

Article 27, GWS Sea

SUBSTANCE

Provides that small Coastal Rescue Craft and fixed coastal installations used exclusively by these craft for their missions shall be protected and respected, so far as operational requirements permit.

PRESENT TEXT

Under the same conditions as those provided for in Articles 22 and 24, small craft employed by the State or by the officially recognized lifeboat institutions for coastal rescue operations, shall also be respected and protected, so far as operational requirements permit.

The same shall apply so far as possible to fixed coastal installations used exclusively by these craft for their humanitarian missions.

PREVIOUS TEXT

None.

BACKGROUND

This Article is also new. It extends the protection of the Convention to the small coastal craft specified, but limits this protection to that possible in the light of operational requirements. It was pointed out that it would be difficult for a belligerent to tolerate the traffic of a large number of high-speed small craft in a limited maritime area during operations. On the other hand, the importance of such craft in the speedy rescue of the wounded, sick and shipwrecked was recognized, and therefore the protection of the Convention was extended to them and their fixed coastal installations, limited only by operational requirements.

D



Article 28, GWS Sea

SUBSTANCE

Provides that sick bays on board warships shall be respected and spared if fighting occurs on board. Provides that sick bays may not be diverted from their purpose, so long as required for wounded and sick.

PRESENT TEXT

Should fighting occur on board a warship, the sick-bays shall be respected and spared as far as possible. Sick-bays and their equipment shall remain subject to the laws of warfare, but may not be diverted from their purpose so long as they are required for the wounded and sick. Nevertheless, the commander into whose power they have fallen may, after ensuring the proper care of the wounded and sick who are accommodated therein, apply them to other purposes in case of urgent military necessity.

PREVIOUS TEXT

Article 7 of the 1907 Hague Convention

In the case of a fight on board a warship, the sick wards shall be respected and spared as far as possible.

The said sick wards and the materiel belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

BACKGROUND

Art. 28 is basically the same as old Art. 7. The commander into whose power sick bays and their equipment have fallen may, however, after ensuring the proper care of the wounded and sick, apply them to other purposes only in case of urgent military necessity.

D



Article 29, GWS Sea

SUBSTANCE

Provides that hospital ships in occupied ports are authorized to leave.

PRESENT TEXT

Any hospital ship in a port which falls into the hands of the enemy shall be authorized to leave the said port.

PREVIOUS TEXT

None

BACKGROUND

This is a new provision which was generally accepted at Stockholm and Geneva.

D

Article 30, GWS Sea

SUBSTANCE

Requires hospital ships to afford relief to wounded, sick and shipwrecked without distinction of nationality. Provides that they shall not be used for military purposes, and shall not hamper movements of the combatants.

PRESENT TEXT

The vessels described in Articles 22, 24, 25 and 27 shall afford relief and assistance to the wounded, sick and shipwrecked without distinction of nationality.

The High Contracting Parties undertake not to use these vessels for any military purpose. Such vessels shall in no wise hamper the movements of the combatants. During and after an engagement, they will act at their own risk.

PREVIOUS TEXT

Article 4, para. 1-4 of the 1907 Hague Convention  
(identical with Art. 4, 1-4 of the 1899 Hague (III))

The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These vessels must in no wise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

BACKGROUND

Art. 30 is substantially the same as the provision in the 1907 Convention. The new Article makes this provision applicable to the new category of small craft protected by Article 27.

D

Article 31, GWS Sea

SUBSTANCE

Provides that Parties to the conflict shall have the right to control and search hospital ships. Provides that a Commissioner may be put on board to ensure that the orders given are carried out.

PRESENT TEXT

The Parties to the conflict shall have the right to control and search the vessels mentioned in Articles 22, 24, 25 and 27. They can refuse assistance from these vessels, order them off, make them take a certain course, control the use of their wireless and other means of communication, and even detain them for a period not exceeding seven days from the time of interception, if the gravity of the circumstances so requires.

They may put a commissioner temporarily on board whose sole task shall be to see that orders given in virtue of the provisions of the preceding paragraph are carried out.

As far as possible, the Parties to the conflict shall enter in the log of the hospital ship, in a language he can understand, the orders they have given the captain of the vessel.

Parties to the conflict may, either unilaterally or by particular agreements, put on board their ships neutral observers who shall verify the strict observation of the provisions contained in the present Convention.

PREVIOUS TEXT

Article 4, para 5 and 6 of the 1907 Hague Convention  
(identical with Art. 4, para 5&6 of the 1899 Hague (III))

The belligerents shall have the right to control and search them (military hospital ships), they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board, they can even detain them, if important circumstances require it.

As far as possible, the belligerents shall enter in the log of the hospital ships the orders which they give them.

Article 31, GWS SeaBACKGROUND

Art. 31 is based on the last two paragraphs of the 1907 Hague Convention. The new Article clarifies some of the conditions of the control that may be exercised, by substituting "they (the parties to the conflict) can refuse assistance from these vessels" for the ambiguous phrase "they can refuse to help them." Control of wireless and other means of communication (visual signals; sound signals) has been added; the period of detention has been limited to a period not exceeding seven days from the time of interception. The duties of the commissioner who may be put on board these vessels, has been specifically limited to seeing that the orders given in connection with control are carried out. Orders given the captain of the vessel must now be entered in the log as far as possible, in a language the captain can understand.

The last paragraph of this Article is new. It provides that neutral observers may be taken on board to note strict observance of the Convention.



Article 32, GWS Sea

SUBSTANCE

Provides that hospital ships in neutral ports are not classed as warships.

PRESENT TEXT

Vessels described in Articles 22, 24, 25 and 27 are not classed as warships as regards their stay in a neutral port.

PREVIOUS TEXT

Article 1 para. 2 of the 1907 Hague Convention

These ships (military hospital ships, see para. 1 of Art. 1), moreover, are not on the same footing as war-ships as regards their stay in a neutral port.

Article 1 para. 2 of the 1899 Hague (III) Convention.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

BACKGROUND

Art. 32 is a rewording and clarification of old Art. 1 para. 2. It extends to all hospital ships protected by the conventions, not only military hospital ships, as the old Art. 1 para. 2.

A distinction exists between the protections to be accorded war-ships and military hospital ships. War-ships are not protected from attack; however, if fighting should occur on board, Article 28 requires that sick bays be protected and respected so far as possible. Article 22 provides that military hospital ships, may in no circumstances, be attacked or captured, and at all times shall be respected and protected. Such protection can only be withdrawn if such ships are used for other than humanitarian purposes (Article 34).

D



Article 33, GWS Sea

SUBSTANCE

Provides that merchant vessels which have been transformed into hospital ships cannot be used for any other purpose throughout hostilities.

PRESENT TEXT

Merchant vessels which have been transformed into hospital ships cannot be put to any other use throughout the duration of hostilities.

PREVIOUS TEXT

None.

BACKGROUND

This new article is designed to prevent abuse of the protection extended to hospital ships, in particular, it was feared, that without this express prohibition governments might refit large merchant vessels as hospital ships, send them overseas through danger zones and later reconvert them to merchant vessels.

D

Article 34, GWS Sea

SUBSTANCE

Provides that protection of hospital ships shall not cease unless they commit acts harmful to the enemy.

PRESENT TEXT

The protection to which hospital ships and sick-bays are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming in all appropriate cases a reasonable time limit, and after such warning has remained unheeded.

In particular, hospital ships may not possess or use a secret code for their wireless or other means of communication.

PREVIOUS TEXT

Art. 8 para. 1 of the 1907 Hague Convention

Hospital ships and sick wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

BACKGROUND

This Art. corresponds to Art. 21 of the GWS, which deprives fixed establishments and mobile medical units of protection under the same conditions. Both Conventions have the added provision that due warning must be given, naming a reasonable time limit, and that the warning must have remained unheeded, before the protection of the Conventions can be withdrawn. GWS Sea provides further, that hospital ships may not possess secret code for their wireless or other means of communication. This clause is also new.

D

Article 35, GWS Sea

SUBSTANCE

Enumerates certain conditions which shall not be considered as depriving hospital ships and sick bays of the protection of the Convention.

PRESENT TEXT

The following conditions shall not be considered as depriving hospital ships or sick-bays of vessels of the protection due to them:

- (1) The fact that the crews of ships or sick-bays are armed for the maintenance of order, for their own defence or that of the sick and wounded.
- (2) The presence on board of apparatus exclusively intended to facilitate navigation or communication.
- (3) The discovery on board hospital ships or in sick-bays of portable arms and ammunition taken from the wounded, sick and shipwrecked and not yet handed to the proper service.
- (4) The fact that the humanitarian activities of hospital ships and sick-bays of vessels or of the crews extend to the care of wounded, sick or shipwrecked civilians.
- (5) The transport of equipment and of personnel intended exclusively for medical duties, over and above the normal requirements.

PREVIOUS TEXT

Art. 8 para. 2 of the 1907 Convention

The fact of the staff of the said ships and sick wards being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, is not a sufficient reason for withdrawing protection.

BACKGROUND

This Art. is more detailed than old Art. 8, 2 and follows Art. 8 of the 1929 Red Cross Convention. It adds two new conditions: the

D

Article 35, GWS Sea

fact that medical care is extended to wounded, sick and shipwrecked civilians, and the fact that medical equipment and personnel over and above the normal requirement is on board the ship. This latter clause was inserted to avoid difficulties arising from the presence on board of personnel on their way to care for the wounded and sick, on the pretext that they were not members of the regular medical staff.

This Article is the counterpart to Art. 22 of the GWS, adapted to the conditions of maritime warfare.

Article 36, GWS Sea

SUBSTANCE

Provides that religious, medical and hospital personnel of hospital ships, may not be captured during time they are in the service of the hospital ship.

PRESENT TEXT

The religious, medical and hospital personnel of hospital ships and their crews shall be respected and protected; they may not be captured during the time they are in the service of the hospital ship, whether or not there are wounded and sick on board.

PREVIOUS TEXT

Article 10 of the 1907 Hague Convention

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take away with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander-in-chief considers it possible.

The belligerents must guarantee to the said staff, when it has fallen into their hands, the same allowances and pay which are given to the staff of corresponding rank in their own navy.

Note: (The above Article is identical with Art. 7 of the 1899 Hague (III) Convention, except for a rephrasing of the last sentence.)

BACKGROUND

Article 36 is basically a new provision. It establishes a rule of absolute exemption from capture of religious and medical and hospital personnel of hospital ships, as well as their crews. This is not the case for the same personnel on land (see Arts. 24 and 28 GWS) or for such personnel on other ships. The logical reason for this rule is the absolute prohibition contained in Art. 22 against capture of hospital ships. The operation of hospital ships could be rendered inoperative if their crews could be taken prisoners, since without the crew the



Article 36, GWS Sea

hospital ship could not function. Religious, medical and hospital personnel are protected as long as they are in the service of the hospital ship, even if there are temporarily no wounded or sick on board. The same protection does, however, not extend to such personnel if it is merely transported on board the hospital ship in accordance with Art. 35 (5), since such personnel, transported over and above normal requirements, is not essential for the functioning of the hospital ship.

Article 37, GWS Sea

SUBSTANCE

Provides that religious, medical and hospital personnel of ships other than hospital ships shall be respected and protected if they fall into the hands of the enemy. Authorizes temporary detention, when medical and spiritual needs of prisoners of war demand.

PRESENT TEXT

The religious, medical and hospital personnel assigned to the medical or spiritual care of the persons designated in Articles 12 and 13 shall, if they fall into the hands of the enemy, be respected and protected; they may continue to carry out their duties as long as this is necessary for the care of the wounded and sick. They shall afterwards be sent back as soon as the Commander-in-Chief, under whose authority they are, considers it practicable. They may take with them, on leaving the ship, their personal property.

If, however, it prove necessary to retain some of this personnel owing to the medical or spiritual needs of prisoners of war, everything possible shall be done for their earliest possible landing.

Retained personnel shall be subject, on landing, to the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

PREVIOUS TEXT

Article 10, para. 1 & 2 of 1907 Hague Convention  
(identical with Art. 7, par. 1 & 2 of 1899 Hague (III))

The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave, when the commander-in-chief considers it possible.

BACKGROUND

The preceding Article dealt with protected personnel and crews of hospital ships only. This Art. relates to the protection of the

Article 37, GWS Sea

same personnel of other ships, except crews. There is no reason for special protection of crews (and exemption from capture) of the vessels dealt with in this Article. Article 37 is based on old Art. 10, para. 1 & 2, but differs from its provisions in several respects. Old Art. 10 protects religious etc. personnel of any captured vessel. This would include merchant vessels etc., Art. 37 only protects those who are charged with the medical and spiritual care of "protected" persons, i.e. the persons designated in Articles 12 and 13 of the present Convention. The personnel protected by this Article may be retained, where necessary, to take care of the medical and spiritual needs of prisoners of war. This, however, is the exception. The rule is, that as soon as they have finished the care of the wounded and sick in their charge, they be sent back as soon as practicable. Upon landing, the retained personnel become subject to the corresponding provisions of the GWS, in particular Art. 28. They can thus be retained only in so far as the health and spiritual need of their fellow POW's require; they shall not be deemed POW's, nevertheless, they shall at least benefit by all the provisions of the GPW Convention.

This part of Art. 37, making the GWS and GWS Sea complementary to each other, is entirely new.

Article 38, GWS Sea

SUBSTANCE

Authorizes charter of vessels to transport equipment and material to be used exclusively for treatment of wounded and sick and prevention of disease. Condition: adverse party has been notified of particulars of voyage and approved them. Adverse party may board these vessels, but not capture them or seize equipment. Parties may by agreement put neutral observers on board the ship.

PRESENT TEXT

Ships chartered for that purpose shall be authorized to transport equipment exclusively intended for the treatment of wounded and sick members of armed forces or for the prevention of disease, provided that the particulars regarding their voyage have been notified to the adverse Power and approved by the latter. The adverse Power shall preserve the right to board the carrier ships, but not to capture them or seize the equipment carried.

By agreement amongst the Parties to the conflict, neutral observers may be placed on board such ships to verify the equipment carried. For this purpose, free access to the equipment shall be given.

PREVIOUS TEXT

None

BACKGROUND

This is a new provision. Art. 17 of the Red Cross Convention of 1929 contained a provision regarding capture and eventual return of medical equipment and material. Art. 35 of the GWS changed this provision, since it was felt that under modern conditions of warfare and because not all medical personnel had to be returned, this rule could no longer be maintained (Final Record IIA, 188 & 197). For transport by sea of medical equipment, it was however, agreed that if all the particulars of the voyage had been notified to the adverse party and his approval granted, and since he retained the right to board the ships and check the nature of the equipment, there was no room for abuses, and therefore the protection against capture of these transports and seizure of the equipment should be absolute (Final Record IIA, 188). As an additional safeguard against abuse, the parties may put neutral observers on board these transports. Some discussion arose in connection with the provision

Article 38, GWS Sea

requiring approval of the adverse party. The Russian representative wished to delete this requirement since he felt that arbitrary refusal of this approval might keep needed medical equipment from reaching the wounded and sick. The provision was, however, retained, since the majority felt that only the approval of the adverse party could assure safe voyage of these unmarked transports which otherwise might cross areas of naval operations.



## GWS (Sea) ARTICLE 43

SUBSTANCE

Describes the marking of hospital ships and other craft protected by the Convention.

PRESENT TEXT

"The ships designated in Articles 22, 24, 25 and 27 shall be distinctively marked as follows:

- (a) All exterior surfaces shall be white.
- (b) One or more dark red crosses, as large as possible, shall be painted on each side of the hull and on the horizontal surfaces, so placed as to afford the greatest possible visibility from the sea and from the air.

"All hospital ships shall make themselves known by hoisting their national flag and further, if they belong to a neutral state, the flag of the Party to the conflict whose direction they have accepted. A white flag with a red cross shall be flown at the mainmast as high as possible.

"Lifeboats of hospital ships, coastal lifeboats and all small craft used by the Medical Service shall be painted white with dark red crosses prominently displayed and shall, in general, comply with the identification system prescribed above for hospital ships.

"The above-mentioned ships and craft, which may wish to ensure by night and in times of reduced visibility the protection to which they are entitled, must, subject to the assent of the Party to the conflict under whose power they are, take the necessary measures to render their painting and distinctive emblems sufficiently apparent.

"Hospital ships which, in accordance with Article 31, are provisionally detained by the enemy, must haul down the flag of the Party to the conflict in whose service they are or whose direction they have accepted.

"Coastal lifeboats, if they continue to operate with the consent of the Occupying Power from a base which is occupied, may be allowed, when away from their base, to continue to fly their own national colours along with a flag carrying a red cross on a white ground, subject to prior notification to all the Parties to the conflict concerned.

"All the provisions in this Article relating to the red cross shall apply equally to the other emblems mentioned in Article 41.

"Parties to the conflict shall at all times endeavour to conclude mutual agreements in order to use the most modern methods available to facilitate the identification of hospital ships."

PREVIOUS TEXTSArticle 5 Hague Convention 1907

"Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

"The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half in breadth.

"The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

"All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent under whose control they are placed.

"Hospital ships which, in the terms of Article 4, are detained by the enemy must haul down the national flag of the belligerent to whom they belong.

"The ships and boats above mentioned which wish to ensure by night the freedom from interference to which they are entitled, must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their special painting sufficiently plain."

BACKGROUND

The marking of hospital ships and other craft covered by the same system of protection was very inadequately defined by Article 5 of the 1907 Hague convention. The experience of the last war showed that most of the attacks on hospital ships were attributable to insufficient marking. Therefore, in order to try to make possible identification of hospital ships at long range, extensive changes have been made in the present Convention.

Apart from the national flags, it was decided that the hospital ships both of belligerents and of aid societies should have the same marking. Both on psychological and visual grounds, white was retained as the color for all exterior surfaces, but the horizontal band of green or red was abandoned. One or more red crosses, according to the tonnage of the ship, are to be painted and displayed on both sides of the hull and on the horizontal surfaces. The color of the crosses is to be dark red which will provide the most striking contrast to the white of the ship. A white flag with the red cross is to be hoisted as high as possible on the mainmast which is the first part of a ship to appear on the horizon and will therefore help make identification possible from that moment.

At night and at times of reduced visibility, hospital craft must, subject to the assent of the power to the conflict under whose control they are, take the necessary measures to render their painting and distinctive emblems sufficiently apparent. The Convention does not, however, attempt to dictate the system of lighting, floodlighting, or illumination of crosses to be used to make identification of hospital craft possible at night.

Lifeboats and small craft employed by the medical service are to be painted white with dark red crosses and shall bear, as far as possible, the same marks of identification as the hospital ships.

A special provision states that coastal lifeboats, if they continue to operate from an occupied base with the consent of the occupying power, may continue to hoist their own national colors each time they leave their base. This paragraph responds to the wishes of a large number of national lifeboat societies belonging to occupied countries during the last war who met with great difficulties, since the crews refused to put to sea under the colors of the occupying power. Certain delegations would have been satisfied if these craft had been enabled to carry out their duties solely under the Red Cross flag. The Conference, however, regarded this proceeding as dangerous and decided that the country of origin of such craft should be recognizable.

D

## GWS (Sea) ARTICLE 44

SUBSTANCE

Reserves use of distinguishing signs designated for marking of hospital craft exclusively for indicating and protecting such craft.

PRESENT TEXT

"The distinguishing signs referred to in Article 43 can only be used, whether in time of peace or war, for indicating or protecting the ships mentioned, except as may be provided in any other international Convention or by agreement between all the Parties to the conflict concerned."

PREVIOUS TEXTSArticle 6 Hague Convention 1907

"The distinguishing signs referred to in Article 5 can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned."

BACKGROUND

The Article carries over from the 1907 Hague Convention the provision that the distinguishing signs for hospital craft referred to in the previous Article can only be used, whether in time of peace or war, for indicating or protecting the ships therein mentioned. A provision has been added, however, in the 1949 Convention permitting exceptions to the above if agreed upon in any other international convention or in an agreement between all the parties to the conflict concerned.



## GWS (Sea) ARTICLE 45

SUBSTANCE

Requires parties to the Convention to take necessary measures to prevent abuse of the distinctive signs used for marking hospital craft.

PRESENT TEXT

"The High Contracting Parties shall, if their legislation is not already adequate, take the measures necessary for the prevention and repression, at all times, of any abuse of the distinctive signs provided for under Article 43."

PREVIOUS TEXTS

None.

BACKGROUND

Makes it mandatory that contracting parties, if their legislation is inadequate, to take the measures necessary for the prevention and repression at all times of any abuse of the distinctive signs for protecting hospital craft.

D



# ARTICLE 4

## Substance

Defines protected persons as nationals of a party to the Convention who are in any manner in the hands of another power which is a party to the conflict, or of an occupying power.

The existence of diplomatic representation of their own country in the state in whose hands they are excepts from protection (a) all nationals of cobelligerents and (b) those nationals of neutral states who are in the territory of the belligerent. Nationals of a neutral state in occupied territory remain protected regardless of the existence of diplomatic representation.

For the purposes of protection under Part II, the whole of the population is covered.

Persons protected by any of the other 3 conventions are not protected by the Civilians Convention.

## Present Text

[to be included in final]

## Previous Texts

(Civilians were protected in various ways by the provisions of the Hague Regulations of 1899 and 1907. See Appendix to present commentaries.)

## Background

(a) Article 4 must be read in context

Although Article 4 purports to define the persons protected, it is only a partial statement of the scope of the Convention and must be read in the light of the rest of the Convention, and particularly of Articles 3 and 13.

Article

Article 3 applies in conflicts not of an international character. It contemplates the application of a few basic humanitarian rules to everyone not taking an active part in hostilities, including those who have laid down their arms or been put out of action by whatever cause. Article 4 is not a limitation upon the scope of the protection afforded by Article 3, and no distinction may be made among "civilians" or "prisoners" or "wounded" based upon which side they lived or fought with, unless the parties make such distinctions relevant by special agreements bringing other parts of the Convention into force.

It would seem that persons who do not actually benefit under one of the other 3 conventions, whether because they do not qualify for protection or because the state in whose hands they are or the state of origin is not bound by one of the other 3 conventions, may be entitled to protection under the Civilians Convention. See, IIA Fin. Rec. 814. It would be reasonable to assume, however, the protection accorded by the Civilians Convention was not intended to derogate in any respect from the rights of a prisoner of war under the Hague Conventions, the 1929 POW Convention, or general international law, to the extent  
at least/ that positive or customary law relating specifically to prisoners of war would prevail over any inconsistent provisions of the Civilians Convention.

Part II of the Civilians Convention provides for two general types of protection for everybody in the countries in conflict (Article 13), first, by laying a basis for organizational measures for general safety (Articles 14, 15, 18, 19, 20, 21, 22, 23) and, second, by requiring humane treatment for certain dependent classes of the civilian population (Articles 16, 17, 24, 25, 26). While nationality or the binding effect of the

the Convention on the state of which a person is a citizen, are factors otherwise irrelevant to the applicability of Part II, which applies even to the nationals of a belligerent in its own territory, (Article 4), it is of course necessary that the state to be obligated be a party to the Convention.

As to all other parts of the Civilians Convention, under Article 4, every person not disqualified by enjoying protection under another convention who at a given moment and in any manner whatsoever finds himself in case of a conflict or occupation in the hands of a party thereto of which he is not a national is a protected person, with the following exceptions (which do not apply to Article 3 or part II, as above indicated):

- (1) Nationals of a state not bound by the Convention.
- (2) Nationals of a cobelligerent state having normal diplomatic representation in the state in whose hands they are.
- (3) Nationals of a neutral state having representation as in (2) if the nationals are in the territory of the belligerent. If they are in occupied territory, they remain entitled to protection.

(b) Drafting history

The present text is that proposed to a drafting Committee of Committee III at Geneva in 1949 by a majority consisting of Canada, France, Switzerland, the United Kingdom, and the United States. III Fin. Rec. 100; IIA Fin. Rec. 793. The USSR objected to the limitations imposed by the second paragraph, but the U.S. successfully supported it -- particularly the principle that the existence of regular diplomatic protection made superfluous the added protection of the Convention. This principle, it was pointed out, was of special importance to the United States where there are many resident aliens who for all practical purposes are treated in wartime like American citizens IIA Fin. Rec. 794. The Committee Report defines "normal diplomatic representation"



representation" as "comprising at least one diplomatic representative accredited to a ministry of Foreign Affairs." Id. 811.

The legislative history makes it clear that stateless persons are not deprived of protection by the first sentence of the second paragraph, but continue to enjoy it because they fall in the category of persons not nationals of the state in whose hands they are. Id. 794-795.

## Article 5

### Substance

Permits an Occupying Power to refuse rights of communication to spies, saboteurs or persons definitely suspected of hostile activity, when and only so long as military security so requires; and permits a party to a conflict to cut off any rights of such a person in its territory as would, if exercised, prejudice the security of the state, and only so long as they would.

Requires, even in these security cases, that a party accord humane treatment, and respect the rights of fair trial as prescribed by the Convention.

### Present Text

[In final]

### Previous Texts

None.

### Background

Article 5 was born of a concern voiced by the United States, the United Kingdom and other delegations at Geneva in 1949 that Article 4 in extending protection to anyone in the hands of a Party to the conflict, or Occupying Power, of which he was not a national -- with various exceptions -- failed adequately to safeguard the legitimate interest of a state in its security as against suspected spies, saboteurs and the like. The Delegate of Australia summed the matter up in this way:

"...In his opinion, the rights of the State in relation to certain persons such as spies, saboteurs, fifth columnists and traitors, had been insufficiently defined. The only laws which protected a State against its enemies were, it seemed, the Criminal Laws in force before hostilities. It was desirable to provide for the necessary exceptions to the rules for protection contained in the Convention." IIA Fin. Rec. 622.

While



While it was true that various articles contained express exceptions which would safeguard security (e.g. present Article 35 conditioning the right to depart the territory at the beginning of a conflict on the "national interests" of the State), others did not (e.g. Article 93, which might be thought to privilege a minister, although suspected of espionage, to travel about and communicate freely).

A drafting committee charged with redrafting Article 4 took care of the problem by recommending present Article 5, upon the proposal of Australia, as a new article for the Convention. On the committee, Canada, the United States, France, the United Kingdom and Switzerland supported the new text, Norway abstained, the Soviet Union opposed. IIA Fin. Rec., 796. Extensive discussion ensued in Committee III and in Plenary; the text was adopted in English 29-8-4 and in French 38-0-7. IIA Fin. Rec., 798; IIB Fin. Rec. 384, 486.

The Report of Committee 3 makes it clear that forfeiture of the right of communication permitted in the case of persons in occupied territory is equivalent to placing the accused in solitary confinement. IIA Fin. Rec. 815.

The safeguarding provisions respecting rights to fair trial (Articles 71-76 and 126) and humane treatment establish a minimum of required treatment which can not be denied even in the case of a person who is suspected of espionage in the territory of the belligerent and whose rights are otherwise generally subject to suspension, if necessary.

Since the first paragraph of Article 5 would seem to apply where a suspected spy was apprehended in a combat zone in the territory of the capturing belligerent in a case where the Convention was applicable to  
such

such a person, it would appear reasonably to follow that it would apply in the same way to a suspected spy apprehended by the invading belligerent prior to the commencement of an occupation of the area.

The provisions of Article 5 are intended to permit a belligerent power, acting humanely and with discrimination, to do everything essential for its security in time of war, either in its home territory, or in occupied territory. For example, during World War II, the United States did not intern at one time, after completion of a sifting process, more than about 4,000 out of 1,000,000 resident enemies. At the same time, practically all of their internees were allowed right of communication, and their treatment was under the scrutiny of protecting powers. Such discriminating security measures are permitted by Article 5 and in large measure specifically provided for by Articles 43 and 78, relating to internment.

Article 6Substance

Article 6 provides that for protected persons generally, the Convention begins to apply from the outset of any conflict or occupation, and ceases to apply, in the territory of parties to the conflict, on the general close of military operations or, in the case of occupied territory, one year thereafter.

However, persons in either territory remain subject to the control of the party to the recent conflict or the occupying power, as the case may be. Under the Convention and general international law some restrictive measures might survive the general close of military operations. Article 46, for example, clearly assumes as much. Accordingly, appropriate safeguards are stipulated.

As to those who may not have been immediately released, repatriated or reestablished, the Convention applies in full.

As to persons in occupied territory, provision is made for the continued application of certain articles conferring basic human and judicial rights, which shall bind the occupying power to the extent that it exercises the functions of government in such territory. The Articles involved are:

1-12 (General provisions and Common Articles. The Protecting Power, e.g., continues to function, and the general security exception remains applicable.)

27 (Basic humanitarian treatment)

29-34 (Same)

47 (Preserves rights as against change by annexation or arrangement with the local authorities so long as occupation lasts.)

49 (Transfers,



- 49 (Transfers, evacuation and deportation)
- 51 (Service in armed forces and compulsory labor under Occupying Power)
- 52 (Same)
- 53 (Respect for property)
- 59 (Facilitating relief programs)
- 61-63 (Same)
- 64-76 (Criminal proceedings)
- 143 (Access by Protecting Powers)

It is to be noted that such affirmative and costly responsibilities as food, medical care and the like do not carry over beyond the first year following the general close of military operations.

Present Text

[to be included in final]

Previous Text

None.

Background

(a) Meaning of occupation

While stating the Convention's applicability in terms of the duration of an "occupation", Article 6 does not define "occupation". Article XLIII of the Regulations annexed to the 1907 Hague Convention Respecting the Laws and Customs of War on Land provides:

"Territory is considered occupied when it is actually placed under the authority of the hostile army.

"The occupation extends only to the territory where such authority has been established and can be exercised."

Accordingly, there may be a period of imprecise duration during which an army may be present and operating but when occupation has not been

established.

- 49 (Transfers, evacuation and deportation)
- 51 (Service in armed forces and compulsory labor under Occupying Power)
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established.



established. II Oppenheim, International Law (7th Ed., Lauterpacht, 1952) 434-5. All of those duties incumbent on an occupant under the Convention could not in fact be carried out until the passage of some interval to permit consolidation of control.

It was well understood that occupation meant both occupation during war itself and sudden occupation without war, as envisaged in the second paragraph of Article 2 ("even if the said occupation meets with no armed resistance"). IIA Fin. Rec. 815.

(b) Continued applicability of the Convention, particularly as to occupied territory.

It has been the view of the United States that after the unconditional surrender of Germany and Japan, the Regulations annexed to Convention No. IV of The Hague and the customary international law relating to belligerent occupation were, in strict law, no longer applicable to those countries. Nevertheless, the United States has as a matter of policy been guided by the applicable principles of customary and conventional law relating to belligerent occupation in those matters in which the policies or directives of the occupying administration do not provide to the contrary. Had Article 6, GC, been in force in 1945, the United States would, as regards Germany, have been bound by the provisions of the Civilians Convention on occupation until May 1946 and thersafter to the extent it exercised the functions of government, by the specific provisions referred to in the third paragraph of the article.

Indeed, the text approved at the Stockholm Conference would have made the Convention applicable in toto until the end of occupation. This result was found unacceptable at Geneva in 1949. The considerations leading to a modification at Geneva were stated clearly by the United States and Norway in Committee 3:

"Mr. Clattenburg

"Mr. Clatterburg (United States of America) said that his Delegation would propose an amendment to Article 4 to provide that the Civilian Convention should cease to apply not earlier than one year after the termination of hostilities. It would be noted that the Convention did not define the terms 'occupied territory' or 'military occupation'. It was the view of the United States Delegation that the obligations imposed by the Convention on an Occupying Power should be applicable to the period of hostilities and to the period of disorganization following on the hostilities; these obligations would vary according to the nature and duration of the occupation. Experience had shown that an Occupying Power did, in fact, exercise the majority of the governmental functions in occupied territory. A prolonged military occupation was, however, also characterized by a progressive return of governmental responsibility to local authorities. The Occupying Power should be bound by the obligations of the Convention only during such time as the institutions of the occupied territory were unable to provide for the needs of the inhabitants. The ultimate solution of such problems as revictualling, sanitation and war damage was not the responsibility of the Occupying Power. He quoted the case of the Allied occupation of Germany and Japan to show that the responsibility of the Occupying Powers for the welfare of the local populations was far less at present than during the period immediately following hostilities." IIA Fin. Rec. 623.

.....

"Mr. Castberg (Norway) agreed that, when an occupation lasted after the termination of hostilities, the responsibilities of the Occupying Power could not all be maintained indefinitely. He wondered, however, whether a time-limit of one year was the best solution. A more obvious course would appear to be to decide which obligations should cease (for example, those concerning food supplies) and which should be maintained (for example, those concerning justice)." Id. 624.

A drafting committee of Committee III by vote of 5 (Canada, France, Norway, Switzerland, USA) to 2 (UK, USSR) proposed a text substantially like present Article 6, except that in the territory of a party to a conflict the cutoff date was one year after the general close of military operations. In Committee III, this text was adopted over the objection of the USSR which did not wish any part of the Convention to apply in occupied territory at the end of one year after close of military operations. IIA Fin. Rec. 775, 776; III Fin. Rec. 102.

The Report of Committee III elaborated on the above-quoted observations of the United States and Norway, and summed the matter up:

"...By



"...By making this distinction, the right to be protected against arbitrary acts until the conclusion of occupation will be safeguarded by the provision of Article 4, while provisions which would constitute a heavy burden on the Occupying Power during the troubled period following the end of war, will only remain in force for one year after the conclusion of military operations." IIA Fin. Rec. 816.

(c) As to territory of a belligerent

In Plenary, by vote of 17-14-12, an amendment proposed by the United Kingdom was carried cutting out the one year continued application of the Convention in the territory of a belligerent following close of military operations. IIB Fin. Rec. 388. The USSR supported the Committee text on the ground that the passions of war would continue and would need to be guarded against. The United Kingdom believed regular judicial procedures would be adequate and pointed out, first, that the one year extension might be used to justify unreasonable prolongation of internment, and second that persons not immediately released would in any event continue to be protected. Id. 386-8.

(d) As to persons not yet released

Article 46 of the Convention provides:

"In so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons shall be cancelled as soon as possible after the close of hostilities.

"Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities."

Articles 132 and 133 provide that internees shall be released as soon as the reasons necessitating internment cease, and that internment shall cease as soon as possible after the close of hostilities. Article 41 forbids transfer of a protected person to a country where he has reason to fear political or religious persecution. Thus, "reestablishment" would

would be the alternative to repatriation for such a person. These provisions, and the fact that some interval for their accomplishment may be necessary, give the background for the provision continuing application of the Convention pending release, repatriation and rehabilitation. IIA Fin. Rec. 816.

(e) General conclusion of military operations defined.

"General conclusion of military operations" was used rather than "conclusion of hostilities" to avoid confusion in countries such as France where "the conclusion of hostilities" is effected by decree repealing internal war legislation. "The general conclusion of military operations means when the last shot has been fired."

IIA Fin. Rec. 815.

PART II - GENERAL PROTECTION OF POPULATIONS AGAINST  
CERTAIN CONSEQUENCES OF WAR

The greater part of the Civilian Convention is devoted to the protection of "protected persons", who are, generally speaking, alien enemies in the territory of a belligerent power and the inhabitants of occupied territory. However, Part II, consisting of Articles 13 to 26 inclusive, contains some broad humanitarian concepts applicable to the entire populations of countries at war.



### ARTICLE 13

#### Substance and present text

The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

#### Prior texts

None.

## ARTICLE 14

### Substance

A state may establish in its own territory or in territory occupied by it hospital and safety zones organized to protect from the effects of war "wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven". Thereafter, the parties to a conflict may agree upon the recognition of such zones and may use as the basis for such agreement Annex I of the Civilian Convention which contains model provisions as to the character and marking of such zones and to prevent dishonest use of them. The Protecting Powers and the International Committee of the Red Cross are invited to propose the institution and recognition of hospital and safety zones.

### Present text

In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant-mothers and mothers of children under seven.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities.

Prior texts

None.

Background

Article 14 generally corresponds to Article 23 of the Sick and Wounded Convention. It encourages, rather than requires, the establishment and recognition of hospital and safety zones. This is emphasized by the fact that Article 14 uses the words "may establish", in contrast with "shall endeavor to set up" in the Stockholm draft.

While such zones have had little if any use in the past, the idea is not a new one. The establishment of such zones was proposed by a group of doctors and lawyers meeting at Monaco in 1934. Deltenne, General Collection of Laws and Customs of War p. 851. Also, the International Red Cross Conference at Rome in 1921, at Brussels in 1930, and at Geneva in 1931 proposed the use of hospital zones.

## ARTICLE 15

### Substance

While Article 14 refers to the establishment of zones far from the fighting for the protection of certain categories of dependent civilians, Article 15 encourages belligerents to establish in the regions where the fighting is taking place neutralized zones to shelter wounded and sick combatants and non-combatants and civilians "who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character."

### Present text

Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction:

- (a) wounded and sick combatants or non-combatants;
- (b) civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralized zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralization of the zone.

### Prior texts

None.



## ARTICLE 16

### Substance

The wounded, sick and infirm, and expectant mothers shall receive particular protection and respect. As far as military considerations allow, belligerent powers shall facilitate the search for the dead and the assistance and protection of the wounded and other persons exposed to grave danger.

### Present text

The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

### Prior texts

None.

### Background

Article 16 applies to wounded and sick, etc., persons generally the principles of protection prescribed by Articles 12 and 15 of the Sick and Wounded Convention for the sick and wounded in armed forces.

The phrase "as far as military considerations allow" at the beginning of the second paragraph of Article 16 was retained, over the objection of some delegates, "to give the text elasticity which a sense of reality requires". IIA Final Record 818. The British delegate remarked this Article was different from the corresponding

provisions of the Sick and Wounded Convention which involve armed forces who are under discipline and control of military commanders. On the other hand, a commander should not be bound to allow civilians not part of his forces to wander in the battle area where they might observe troop dispositions and obtain other vital military information.

IIB Final Record 392.

## ARTICLE 17

### Substance

Belligerent powers shall endeavor to agree upon the removal of certain classes of non-combatants from besieged or encircled areas, and for the entry into such areas of ministers and medical personnel and equipment.

### Present text

The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.

### Prior text

None.

### Background

No rule of law compels the commander of an investing force to permit the population, including women, children, aged, sick, wounded, to leave the besieged locality even when a bombardment is about to commence. It is entirely within the discretion of the besieging commander whether he will permit them to leave and under what conditions. Section 51, Army Field Manual 27-10 (1940); 2 Oppenheim, International Law, 7th ed. Lauterpacht (1952), 419. This Article does not change existing international law. It merely provides the parties to the conflict shall endeavor to conclude local agreements for the evacuation from, and entry into, encircled areas for certain civilians. Such permission

has sometimes been granted. In 1870, during the Franco-Prussian War, the German besiegers of Strasbourg as well as of Belfort allowed the women, the children, and the sick to leave the besieged fortresses.

2 Oppenheim, op cit, 419 Note 2.



## ARTICLE 18

### Substance

Article 18 contains important rules for the protection of civilian hospitals in wartime. For the first time, it permits the use of the Red Cross emblem to mark civilian hospitals, but only if authorized by the government of the country in which such hospitals are located.

### Present text

Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all time be respected and protected by the Parties to the conflict.

States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19.

Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, but only if so authorized by the State.

The Parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.

In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives.

#### Prior text

Article 27 of the Hague Regulations of 1907 provides that "In sieges and bombardments all necessary steps must be taken to spare, as far as possible, building dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

"It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand."

#### Background

Article 18 applies to civilian hospitals some of the principles of protection prescribed for military hospitals by Article 19 and 42 of the 1949 Sick and Wounded Convention.

The first paragraph of Article 18 provides that "Civilian hospitals \*\*\* may in no circumstances be the object of attack \*\*\*". The Geneva Conference substituted the phrase "be the object of attack" for the words "be attacked" in the Stockholm draft, thus emphasizing that only deliberate attacks, as distinguished from inadvertent attacks, institute a violation of Article 18.

Under paragraph two, a belligerent power must provide each civilian hospital with a certificate to the effect that it is a civilian

hospital and that the buildings which it occupies are not used for any purpose which, under Article 19, would deprive it of protection.

The third paragraph of Article 18 provides that civilian hospitals may be marked by the Red Cross emblem (or other corresponding emblem under Article 38 of the Sick and Wounded Convention), "but only if so authorized by the State". This is the first time that provision has been made for the use of the Red Cross emblem by civilian hospitals. Since many delegates feared that emblem would be misused and its protective value diluted by permitting its use otherwise than by armed forces and national Red Cross societies, Article 18 places upon the government of each country the responsibility for determining whether and the conditions under which it will permit its civilian hospitals to be marked by the Red Cross emblem. It should be noted that this extension of the permitted use of the Red Cross emblem by Article 18 (and by Articles 20, 21 and 22) may require a revision of 18 U. S. Code 706, which presently defines as a crime the use of the emblem by anyone other than the American National Red Cross and the medical services of the armed forces (and pre-1905 commercial users).

Committee III of the Geneva Conference pointed out that the marking of civilian hospitals is of a declaratory nature, and that "troops observing that a hospital is not provided with the emblem would be in no way justified in taking it over as quarters". IIA Final Record 818.

The fourth paragraph provides that "The Parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action." The qualifying phrase, "in so far as military considerations permit", recognizes that marking a civilian hospital the location of which is known to the enemy can provide hostile aircraft with a navigating landmark. Accordingly, a belligerent power, which fears that marking hospitals would thus aid its enemy, may refrain from using such markings.

The Stockholm draft had provided that "In view of the danger incurred by hospitals being close to military objectives, the responsible authorities shall insure that such hospitals are situated as far as possible from the said objectives". I Final Record 116. The Geneva Conference considered unrealistic any suggestion that many existing hospitals should be removed from the vicinity of what might be regarded as military objectives, particularly since there might be a need for hospitals in such areas. IIA Final Record 818. Accordingly, it was revised to the form of a recommendation as it now appears in the last paragraph of Article 18. Of course, no one should be surprised if a hospital adjacent to an arms factory is damaged.



limit" for the purpose of enemy forces warning a hospital to discontinue its use for harmful acts, will necessarily depend upon the circumstances including the gravity of the harmful acts for which the hospital is being employed. Realistically, it must be understood that if a hospital is being used as a sniping post, the only feasible warning may be gunfire, and the time limit may be short.

The purpose of the second paragraph is "to prevent an unscrupulous enemy from attacking a hospital on some spurious pretext". IIA Final Record 819. Abolishing the hard-and-fast distinction of the 1929 Sick and Wounded Convention between military and civilian hospitals, it is provided that the presence of sick and wounded of the armed forces in a civilian hospital shall not constitute an act harmful to the enemy which would deprive it of protection. Similarly, as under Article 22(3) of the Sick and Wounded Convention, the presence in a civilian hospital of small arms and ammunition taken from such sick and wounded combatants but not yet returned to the armed forces, shall not deprive the hospital of protection. Of course, the enemy may capture such sick and wounded members of the armed forces and their weapons.

## ARTICLE 20

### Substance

Article 20 provides that the staffs of civilian hospitals shall be respected and protected, and defines the circumstances under which such persons may wear an armlet bearing the Red Cross emblem.

### Present text

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.

In occupied territory and in zones of military operations, the above personnel shall be recognizable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armlet which they shall wear on the left arm while carrying out their duties. This armlet shall be issued by the State and shall bear the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Other personnel who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection and to wear the armlet, as provided in and under the conditions prescribed in this Article, while they are employed on such duties. The identity card shall state the duties on which they are employed.

The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

Prior text

None.

Background

At the Geneva Conference, there developed a serious difference of opinion as to the extent to which the staffs of civilian hospitals should be permitted to wear the Red Cross emblem. One school of thought was eager to authorize use of the emblem by anyone connected with the operation of hospitals and the care of the sick and wounded. The other school, including the United States Delegation, feared that such broadening of the authorized use of the emblem would result in abuses and in dissipating its protective value. Article 20 is a compromise of these views.

The principal problem was whether special protection should be invoked for everyone who does any work in a hospital, or only for those persons are employed full time in hospital. The first paragraph of Article 20 provides that "Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected". This category of persons includes only the full-time staff of hospitals; it excludes such persons as doctors and volunteer nurses who spend only a few hours a week in a

hospital. This category includes not only full-time doctors and nurses but also such persons as full-time cooks who are essential to the functioning of hospitals; it also includes such full-time hospital employees as ambulance drivers and others who engage in "the search for, removal and transporting of and caring for" wounded and sick civilians etc.

In addition, such full-time hospital personnel "in occupied territory and in zones of military operations \*\*\* shall be recognizable by means of an identity card bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armlet which they shall wear on the left arm while carrying out their duties. This armlet shall be issued by the State and shall bear" the Red Cross emblem. It is clear, therefore, that full-time hospital personnel shall be issued identity cards and may be permitted to wear the Red Cross emblem only "in occupied territory and in zones of military operations". IIA Final Record 819. Outside of such areas, civilian hospital personnel are not entitled to wear the Red Cross emblem. It is equally clear that even in such areas, the government in control of the area may control the use of the emblem by hospital personnel. Moreover, it is a governmental function to define "zones of military operations".

The third paragraph of Article 20 provides that "Other personnel [i.e., other than persons regularly and solely engaged] who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection and to wear the armlet, as provided



in and under the conditions prescribed in this article, while they are employed on such duties.

It should be noted that persons who work in civilian hospitals full-time or part-time may wear the Red Cross emblem or an armlet only in occupied territory or in zones of military operations, if authorized by the State, and only while they are actually performing their hospital duties. IIB Final Record 395 - 397.

The last paragraph of Article 20 provides that "The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

## ARTICLE 21

### Substance

Convoys of vehicles, hospital trains, and specially provided vessels at sea conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected, and the State concerned may authorize that they be marked by the Red Cross emblem.

### Present text

Convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected in the same manner as the hospitals provided for in Article 18, and shall be marked, with the consent of the State, by the display of the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

### Prior text

None.

### Background

Article 21 generally corresponds to the first paragraph of Article 35 of the Sick and Wounded Convention.

It should be noted that Article 21 does not purport to authorize the use of the Red Cross emblem to mark individual ambulances. This is emphasized by the fact that Article 44 of the Sick and Wounded Convention provides that "in conformity with national legislation and

with the express permission" of the appropriate national Red Cross Society, the Red Cross emblem may be employed to identify ambulances, but only in time of peace.

It should be noted that the use of the Red Cross emblem under Article 21 is placed under governmental control to prevent its misuse.

## ARTICLE 22

### Substance

Article 22 prescribes the conditions under which aircraft exclusively employed to remove certain categories of civilians or to transport medical personnel and equipment shall be respected and may be marked by the Red Cross emblem.

### Present text

Aircraft exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases, or for the transport of medical personnel and equipment, shall not be attacked, but shall be respected while flying at heights, times and on routes specifically agreed upon between all the Parties to the conflict concerned.

They may be marked with the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Such aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

### Prior text

None.

### Background

Article 22 generally corresponds to Article 36 of the Sick and Wounded Convention.



## ARTICLE 23

### Substance

A belligerent power must permit the free passage (e.g., as through its land or sea blockade) of medical supplies intended for civilians, and food, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases, of another Party to the Convention even though the latter is its enemy. However, this obligation of a belligerent to permit free passage of such supplies is subject to the condition that such belligerent is satisfied that they will not aid its enemy directly or indirectly.

### Present text

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

- (a) that the consignments may be diverted from their destination,
- (b) that the control may not be effective, or

(c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.

Prior text

None.

Background

In the Stockholm draft, this Article would have placed upon a belligerent conducting a land or sea blockade an unconditional obligation to permit the free passage of food, clothing and medical supplies needed by certain categories of civilians of an enemy country. In this form, with great possibilities for direct or indirect aid to an enemy's war effort, the proposal was entirely unacceptable to the United States and the United Kingdom. After long discussion at the Geneva Conference, it was agreed that a belligerent must permit the passage of such supplies

"subject to the condition that this Party is satisfied that there are no serious reasons for fearing" such direct or indirect aid to the enemy. Such passage may be further conditioned on distribution to the specified classes of beneficiaries under the local supervision of the Protecting Power.

In brief, it is the blockading belligerent which must be satisfied as to the matters specified in Article 23, but it may not deny passage for any other reasons. However, in a case in which it was clear that such shipments could be prevented from aiding the receiving country's war effort, neutral and humanitarian public opinion would exert a strong pressure upon a belligerent to allow the passage of such shipments. Article 23 does not even suggest that a belligerent should pay for or transport such shipments.

## ARTICLE 24

### Substance

All parties to a conflict shall insure the support and education of children under 15 who are orphaned or separated from their parents as a result of war.

### Present text

The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

### Prior text

None.

### Background

The end of World War II found many thousands of homeless children in devastated areas without support, education, or religious



training. The purpose of Article 24 is to place upon all of the parties to a conflict affirmative obligations to aid such children.

It should be noted that the provision of the first and second paragraphs of Article 24 relate only to children under 15 who are orphaned or separated from their families as a result of war; they in no way interfere with the authority and responsibility of families for caring for their own children.

Under paragraph one of Article 24, a belligerent government is not necessarily required to undertake directly the care of such children; rather, it may discharge its responsibility by facilitating the work of public or private social agencies organized for that purpose. However, the education of such children must, as far as possible, be entrusted to persons of a similar cultural tradition.

The second paragraph of Article 24 reads as follows: "The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph". Notwithstanding the refusal of Committee III of the Geneva Conference, by a close vote to transfer Article 24 to Part III, Section II, where it would apply only to aliens in the home territory of a belligerent, it is not believed that a belligerent government is under any obligation to send its orphaned or separated children to a neutral country. At the most, it would be obligated to facilitate or permit such transfer by other belligerents, and perhaps to provide its own orphaned and

separated children, particularly if they are protected persons, with the same opportunity for refuge in neutral territory as is available to other children in its country. This freedom of action by a belligerent government in relation to its own nationals is emphasized by the fact that the requirement of consent of the Protecting Power has no application to such nationals. IIA Final Record 820.

## ARTICLE 25

### Substance

All persons in belligerent or occupied territory shall be enabled to correspond with members of their families.

### Present text

All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. This correspondence shall be forwarded speedily and without undue delay.

If, as a result of circumstances, it becomes difficult or impossible to exchange family correspondence by the ordinary post, the Parties to the conflict concerned shall apply to a neutral intermediary, such as the Central Agency provided for in Article 140, and shall decide in consultation with it how to ensure the fulfilment of their obligations under the best possible conditions, in particular with the cooperation of the National Red Cross (Red Crescent, Red Lion and Sun) Societies.

If the Parties to the conflict deem it necessary to restrict family correspondence, such restrictions shall be confined to the compulsory use of standard forms containing twenty-five freely chosen words, and to the limitation of the number of these forms despatched to one each month.

### Prior text

None.

### Background

The purpose of Article 25 is to eliminate so far as possible the anguish which results when families are unable to communicate in wartime. An obligation to permit such correspondence is placed upon belligerent governments which, if necessary, must cooperate with neutral agencies and the national Red Cross societies to make possible such correspondence. Such arrangements were made during World War II. Such family correspondence is subject to censorship by belligerent governments. It must be recognized that these rights of communication will sometimes be subject to the practical problems of censorship and the availability of lines of communication.



## ARTICLE 26

### Substance

Belligerents must facilitate inquiries made by members of families for the purpose of meeting or otherwise establishing contact with each other and shall encourage the work on this problem of organizations which are acceptable to it and conform to its security regulations.

### Present text

Each Party to the conflict shall facilitate inquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.

### Prior text

None.

### PART III - STATUS AND TREATMENT OF PROTECTED PERSONS

Part III of the Civilian Convention governs the treatment of "protected persons" as defined in Article 4. It consists of: Section I - Provisions Common to the Territories of the Parties to the Conflict and Occupied Territory; Section II - Aliens in the Territory of a Party to the Conflict; Section III - Occupied Territories; and Section IV - Regulations for the Treatment of Internees. That is, the provisions of Part III dealing with protected persons do not apply to the relationships between a government and its own nationals.

SECTION I - PROVISIONS COMMON TO THE TERRITORIES OF THE PARTIES  
TO THE CONFLICT AND TO OCCUPIED TERRITORIES

Section I, consisting of Articles 27 to 34, inclusive, prescribes certain rules for the treatment of protected persons regardless of whether they are in the home territory of a belligerent or in occupied territory.

## ARTICLE 27

### Substance

Protected persons shall be respected and protected, and they shall be treated without discrimination, subject to measures of control and security taken by the belligerent power in whose power they are.

### Present text

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

### Prior text

Article 46 of the Hague Regulations of 1907 (applicable to occupied territory only) provides that "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected."



Background

Article 27 simply restates the civilized notion that enemy civilians, whether alien enemies in the territory of a belligerent or in occupied territory, who refrain from hostile acts shall be treated humanely.

It should be noted that the third paragraph of Article 27 provides that protected persons shall be treated without any adverse distinction based, inter alia, on "political opinion". At the Geneva Conference, the United States Delegation pointed out that reasonable security measures imposed upon protected persons by a belligerent government would be and should be based upon the political opinions and attitudes of some protected persons, and should not be applied indiscriminately and automatically to all protected persons. IIA Final Record 821. Accordingly, there was added the last paragraph of Article 27, providing that: "However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war." Under this provision, for example, a government in determining whether to intern particular alien enemies may and should take into account the character of their political opinions and loyalties.

## ARTICLE 28

### Substance and present text

The presence of a protected person may not be used to render certain points or areas immune from military operations.

### Prior texts

None.

### Background

Article 28 corresponds in part to the first paragraph of Article 23 of the Prisoners of War Convention. It derives from Article 24 of the Stockholm draft, which, while corresponding to the first paragraph of Article 23 of the Prisoners of War Convention, was broken up by the Geneva Conference into the present Article 28, paragraph (4) of Article 38, and the fifth paragraph of Article 49. IIA Final Record 821-822.

The report of Committee III of the Geneva Conference states that Article 28 prohibits "the stratagem of war which consists in sending civilians to, or of retaining them in, certain areas thus rendered immune from military operations." IIA Final Record 821. For example, a belligerent power may not place protected persons on an important bridge so as to induce the enemy to refrain from attacking it.

## ARTICLE 29

### Substance and present text

The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

### Prior texts

Article 3 of the Hague Regulations of 1907 provides that

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

### Background

It is well established that a State may be liable to pay damages for injuries to persons who, under international law, are entitled to its protection. I Whiteman, Damages in International Law, pp. 573 et seq. The extent to which Article 29 imposes upon States financial responsibility for the treatment of protected persons in violation of the Civilian Convention was not discussed at the Geneva Conference and is not explored here. The existence and measure of any such damage liability is dependent upon so many factors that they should be left for case-to-case determination.

At the Geneva Conference, such State responsibility for the treatment of protected persons was limited to "the treatment accorded to them by its agents". This amendment was made after it was pointed out that an occupying power could not be held responsible for every mistreatment of a protected person in occupied territory since such mistreatment might be caused by local courts continued in operation by the occupying power. IIA Final Record 642, 714, 822. As stated in the report of Committee III of the Geneva Conference:

Treatment

Treatment contrary to the Convention of a protected person does not therefore suffice to establish the responsibility of the State. It is required to establish such responsibility that such treatment be carried out by a person employed by the State. The new wording we adopted indicates this: "the treatment accorded to them by its agents". IIA Final Record 822.

This does not mean that a state escapes responsibility if it fails to take even minimum reasonable measures or those affirmative measures which may be required specifically by the Convention for the protection of protected persons pursuant to the Convention.

## ARTICLE 30

### Substance

Protected persons shall be allowed to communicate with the Protecting Powers, the International Committee of the Red Cross, the local national Red Cross Society, and other organizations (e.g., Y. C. A.) which might assist them; subject to military or security considerations, detaining or occupying powers shall facilitate the work of such organizations.

### Present text

Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them.

These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations.

Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the Detaining or Occupying Powers shall facilitate as much as possible visits to protected persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons.

### Prior texts

None.

### Background

The first paragraph of Article 30, in requiring that protected persons be permitted to communicate with the Protecting Power, the International

Committee



Committee of the Red Cross, etc., is an important corollary of Article 143 which requires that representatives of the Protecting Powers and of the International Committee of the Red Cross be permitted to visit protected persons. It should be noted that in individual security cases these rights of communication and visitation may be suspended pursuant to Article 5.

The provisions of the second and third paragraphs of Article 30 as to the facilities to be accorded to specified organizations largely duplicate the provisions of Article 142.

## ARTICLE 31

### Substance and present text.

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

### Prior texts :

Article 44 of the Hague Regulations provides that

A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence.

### Background.

Article 31 generally corresponds to the fourth paragraph of Article 17 of the Prisoners of War Convention. The necessity for such provisions in the age of Communist "brain washing" needs no elaboration.

See also Nazi Conspiracy and Aggression: Opinion and Judgment (1947) p. 63.

While the origin and purpose of Article 31 is clear, it should also be noted that protected persons will occasionally be suspected of committing or having knowledge of ordinary crimes (e.g., the murder of another protected person), in which event they can be subjected to civilized methods of police investigation and interrogation.

## ARTICLE 32

### Substance and present text

The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

### Prior texts.

With respect to occupied territory, Article 46 of the Hague Regulations provides that "...lives of persons...must be respected." With respect to alien enemies in the home territory of a belligerent, the acts enumerated in Article 32 are prohibited by every civilized penal code.

### Background.

Article 32 generally corresponds to the third sentence of Article 12 of the Sick and Wounded Convention, the third sentence of Article 12 of the Sick and Wounded (Sea) Convention, and the first paragraph of Article 13 of the Prisoners of War Convention. The corresponding provision of Article 29 of the Stockholm draft had provided that "Torture and corporal punishments are prohibited." However, at the Geneva Conference, recent memories of the terrible treatment of civilians in World War II, as established in the Nuremberg and other war crimes trials, led to prolonged discussion as to how far what is now Article 32 should go in enumerating gross types of mistreatment,

mistreatment, whether it should constitute a standard of individual penal liability, and whether it should include vague language which could be construed to prohibit the use of atomic weapons.

There was no objection to a specific proscription of some of the more horrible practices of World War II, even though this amounted to a repetition of provisions common to every penal code. However, the Soviet Union sought to include in the forbidden acts "all other means of exterminating the civilian population". III Final Record 116. After the United States and other delegations pointed out that such language might be interpreted as a prohibition of the use of atomic weapons, the Soviet proposal was rejected. Also, it should be noted that the agreement of the parties to the Convention to refrain from the prohibited acts relates only to protected persons "in their hands", and does not prescribe rules for the conduct of warfare against an enemy country. As the United States Delegation stated in Plenary Session, in successfully opposing a proposal to delete the words "in their hands",

"...The purpose of the phrase 'protected persons in their hands' is to limit the application of Article 29A to protected persons and to preclude any future interpretation that Article 29A regulates the conduct of military operations,

"... 'in their hands' makes it absolutely certain that Article 29A applies only to protected persons in the control of the State in question and not to protected persons in the hands or under the control of some other State or Government. That means that with respect to a particular government Article 29A protects aliens in its home territory and the inhabitants of any territory which that State may be occupying."

It should be noted that the prohibitions of Article 32 apply to States, and that Article 32 does not purport, as do Articles 1146 and 1147, to enumerate categories of violations of the Convention which give rise to individual criminal responsibility.

ARTICLE 33

Substance and present text

No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

Prior Text

Article 28 of the Hague Regulations of 1907 provides that

"The pillage of a town or place, even when taken by assault, is prohibited."

With respect to occupied territory, Article 47 of the Hague Regulations provides that

"Pillage is formally forbidden."

and Article 50 provides that

"No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible."

Background

The provision that no protected person shall be punished for an offense he has not personally committed is intended to preclude the arbitrary imposition of punishment, perhaps as a reprisal, and does not prohibit the punishment under established legal principles, of those persons who instigate or aid and abet others in the actual commission of offenses.



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The prohibition of collective penalties derives from Article 50 of the Hague Regulations. However, the second sentence in Article 33 in no way precludes a belligerent power from applying preventive security measures not forbidden by the Convention, such as internment, curfew, exclusion from certain areas, collection of weapons and cameras, and (in occupied territory) temporary evacuation in accordance with Article 49.

The second paragraph, in prohibiting pillage, merely repeats Article 47 of the Hague Regulations.

The third paragraph of Article 33 provides that "Reprisals against protected persons and their property are prohibited." Reprisals are defined in the United States Rules of Land Warfare (War Department FM 27-10) p. 89, as "acts of retaliation resorted to by one belligerent against the enemy individuals or property for illegal acts of warfare committed by the other belligerent, for the purpose of enforcing future compliance with the recognized rules of civilized warfare." Reprisals against prisoners of war were forbidden by Article 2 of the 1929 Prisoners of War Convention, a prohibition which is repeated in Article 13 of the new Prisoners of War Convention. Historically, it was considered proper for a military commander in occupied territory to make a discriminating use of reprisals to curb illegal combatant activity. The Hostages Case, XI Trials of War Criminals Before The Nuremberg Military Tribunals, 1250. However, in view of the widespread atrocities committed in World War II in the guise of reprisals, it is now generally agreed that reprisals against protected persons should be prohibited altogether.

## ARTICLE 34

### Substance and present text

The taking of hostages is prohibited.

### Prior text

None.

### Background

The United States Rules of Land Warfare, para. 359, contains the following statement with respect to taking hostages:

Hostages have been taken in war for the following purposes: To insure proper treatment of wounded and sick when left behind in hostile localities; to protect the lives of prisoners who have fallen into hands of irregular troops or whose lives have been threatened; to protect lines of communication by placing them on engines of trains in occupied territory; and to insure compliance with requisitions, contributions, etc. When a hostage is accepted he is treated as a prisoner of war.

The United States has made little if any use of hostages in recent times. Heretofore, the taking of hostages as an extreme measure has been recognized, Hyde, International Law (2d rev. ed.), sec. 700; Oppenheim, International Law, Vol. II (6th rev. ed.), pp. 460 et seq.; U.S. Rules of Land Warfare, FM 27-10 (1940), pp. 89-90, although only Germany has taken hostages on a large scale in modern times. The Charter of the International Military Tribunal listed the "killing of hostages" as a war crime. However, in The Hostages Case, Tribunal No. V held that only the killing of hostages without having exhausted all other means of combatting illegal warfare, without a trial, or in excessive numbers, constituted a war crime. XI Trials of War Criminals Before the Nuremberg Military Tribunals, p. 1250. See generally, Wright, The Killing of Hostages as a War Crime, XXV British Yearbook of International Law, 296. During World War II, Germany killed hostages on so large a scale that in Article

34 the Geneva Conference unanimously and without discussion prohibited the taking of hostages altogether so as to end such abuses.

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the age of 14 years or greater.<sup>1/</sup> It should also be noted that Section 215 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1185) (which supersedes the Passport Act of 1918) empowers the President "When the United States is at war or during the existence of any national emergency declared by the President...." to regulate the entry or departure of aliens. Section 215 is discussed, infra, Article 35. See also the Emergency Detention Act of 1950, discussed, infra, Article 43.

Generally, Articles 35 to 46 reflect the treatment which the United States accorded to alien enemies in World War II. At the same time, the mistreatment inflicted by some of the belligerents in World War II upon alien enemies (including American nationals in their hands) demonstrated the need of establishing in international law standards of treatment for such protected persons.

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<sup>1/</sup> The text of the Alien Enemy Act is set forth, infra, Article 42.

## ARTICLE 35

### Substance

Article 35 provides that alien enemies and other protected powers shall be entitled to leave the territory of a belligerent at the beginning of or during a conflict "unless their departure is contrary to the national interests of the State." Those permitted to leave must be allowed to take with them funds necessary for their journey and reasonable amounts of articles for personal use. Applications to depart must be decided as rapidly as possible, and any protected person whose application to depart is denied is entitled to a reconsideration of his case by a court or administrative board designated by the detaining power. The detaining power shall, unless reasons of security prevent or the protected persons involved object, furnish to representatives of the Protecting Power, at their request, the reasons for denial of the application of any protected person to leave the country and the names of such persons who have been denied permission to leave.

### Present text

All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. Those persons permitted to leave may provide themselves with the necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use.

If any such person is refused permission to leave the territory, he shall be entitled to have such refusal reconsidered as soon as possible by an appropriate



appropriate court or administrative board designated by the Detaining Power for that purpose.

Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave.

Prior text

None.

Background

Under normal circumstances, the United States recognizes a right in aliens freely to depart from this country. Such a right has been specifically recognized in various treaties of navigation and friendship to which the United States is a party. Some of these treaties provide that in the event of hostilities between the parties, they shall permit the departure of each other's nationals. 9 Stat. 881; 10 Stat. 916, 1005; 12 Stat. 1003, 1991. See V Hackworth, Digest of International Law 383; Stoehr v. Wallace, 255 U.S. 239, 251. The Alien Enemy Act (50 U.S.C. 22) expressly gives effect to such treaty provisions by providing that

When an alien who becomes liable as an enemy, in the manner prescribed in section 21 of this title, is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

Also,

Also, at the outbreak of war between the United States and other countries, elaborate programs for the repatriation of each side's nationals have been undertaken. At the same time, it has long been recognized that in time of war the departure of particular aliens may be inconsistent with the interests of the United States. More broadly, the United States delegation at the Geneva Conference pointed out that there were present in the United States several million aliens most of whom regarded themselves as permanent residents, and that such persons should not have a right to depart in time of war without regard to the effect of their departure upon the country in which they had settled. IIA Final Record 653. Thus, Section 215 of the Immigration and Nationality Act of 1952 (66 Stat. 190) (which superseded a similar provision in the Passport Act, 22 U.S. Code 223 et seq.) empowers the President in time of war or national emergency to prohibit or regulate the departure of aliens from the United States. Such legislation is consistent with Article 35. However, Article 35 would require the designation of a court or an administrative board to determine appeals by aliens who have been denied permission to depart. This is not a requirement for a trial of security matters, but rather the safeguard of group consideration against mistaken or oppressive action by a single official. IIA Final Report 823.

Such boards would greatly resemble the special boards which reviewed internment cases in this country during World War II. Like the internment review boards which would be required under Article 43, these boards may be established within an existing government agency, and they may be empowered to decide such appeals or make recommendation to a higher authority.

While the Court of Appeals for the District of Columbia Circuit has held in Mao v. Brownell, 207 F. 2d 142 (1953), that due process of law requires that a non-enemy alien be given an opportunity for hearing before he is denied

permission to depart from the United States during a national emergency declared by the President, that decision did not deal with the procedure to be followed in time of war, particularly in the case of alien enemies.

Article 35 also requires that upon request the Protecting Power shall be furnished the names of protected persons denied permission to depart and the reasons for such denials. There are two exceptions to this requirement: first, where the security of the detaining power precludes such disclosure, an exception which would derive in any event from Article 5; second, where the protected person involved objects to such disclosure, as to protect members of his family from persecution.

## ARTICLE 36

### Substance

Article 36 supplements Article 35 by providing that departures permitted under Article 35 "shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food." It is specified that all costs from the point of exit from the territory of the detaining power shall be borne by the country of destination or, where the protected persons are proceeding to a neutral country, by the country of which they are nationals. Article 36 also provides that its terms shall not preclude belligerent governments from making special agreements concerning the exchange and repatriation of their nationals.

### Present text

Departures permitted under the foregoing Article shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food. All costs in connection therewith, from the point of exit in the territory of the Detaining Power, shall be borne by the country of destination, or, in the case of accommodation in a neutral country, by the Power whose nationals are benefited. The practical details of such movements may, if necessary, be settled by special agreements between the Powers concerned.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

### Previous text

None.

### Background

The first paragraph of Article 36 originated in Article 33 of the Stockholm draft which provided that "Repatriations shall be carried out in

satisfactory



satisfactory conditions as regards security, hygiene, healthfulness and food." Clearly, the use of the word "repatriations" suggested a governmental responsibility going beyond the concept in Article 35 of permitted individual departures to be financed by the persons involved. Accordingly, at the Geneva Conference, the United States delegation offered the following amendment to the first paragraph of Article 33 of the Stockholm draft:

"Departures permitted under the foregoing article shall be carried out in satisfactory conditions as regards security, hygiene, healthfulness and food. All costs in connection therewith from the point of exit in the territory of the detaining power shall be borne by the country of destination, or in case of accommodation in a neutral country, by the Power whose nationals are benefitted. The practical details of such movements may, if necessary, be settled by particular agreements between the Powers concerned."

It will be noted that the United States amendment substituted the word "Departures" for "Repatriations", as does the final text of Article 36.

During the first reading of Article 33 and the United States amendment by Committee III at the Geneva Conference, the following discussion occurred (IIA Final Record 655):

Mr. SPEAKE (United Kingdom) observed that, whereas Article 32 referred to arrangements made by individuals, Article 33 spoke of "repatriations", and thus implied that the Governments were responsible to a greater extent. The word "repatriation" had been dropped from the United States amendment. He was not at all sure that that amendment made the Stockholm text clearer. It was in reality a new text altogether.

\* \* \*

At the request of Mr. WERSHOF (Canada), Mr. PILLOUD (International Committee of the Red Cross) explained that the authors of Article 33 had intended that the costs of transportation should in principle be borne by the individuals themselves. Where communications were working normally there would be no call for State intervention. It was only in special cases, particularly that of transport by sea, that the State might have to intervene according to circumstances.

Mr. WU



Mr. WU (China) considered that Article 32 was concerned with the departures organized by individuals, whereas Article 33 dealt with repatriations effected by the State. The United States amendment seemed to him acceptable if the word "departures" was replaced by the word "repatriations".

The CHAIRMAN, in referring the Article to the Drafting Committee, observed that the latter would have to consider three points in particular:

(1) elimination of the ambiguity between the two conceptions of "departure" and "repatriation";

(2) consideration of the question of cost of transport very properly raised by the United States amendment.

Thereafter the Drafting Committee of Committee III, Committee III, and the Conference adopted almost verbatim the text of the United States Amendment.

It is clear from both the language and history of the present Article 36 that it does not impose upon a belligerent state an obligation to pay for the transportation of protected persons to a point of exit from its territory. It is sufficient if the departing protected persons are protected against abuse and are permitted to provide themselves with regular transportation, medical care and food. As a practical matter, some governmental control over such movements would probably be necessary for security reasons and in order to coordinate such movements with arrangements for travel beyond the limits of the United States. Indeed, Article 35 expressly recognizes that special agreements between the countries concerned will sometimes be necessary to make possible such departures of protected persons.

## ARTICLE 37

### Substance

Article 37 recognizes that at the outbreak of hostilities there may be protected persons in the territory of a belligerent who are serving sentences of imprisonment following convictions for crime, or who are being held in custody pending or during criminal proceedings. Article 37 simply requires that such persons shall be treated humanely notwithstanding the outbreak of war, and that upon release from detention under the criminal law they shall be accorded the same rights with respect to departure from this country as are enjoyed by other protected persons under Articles 35 and 36.

### Present text

Protected persons who are confined pending proceedings or serving a sentence involving loss of liberty, shall during their confinement be humanely treated.

As soon as they are released, they may ask to leave the territory in conformity with the foregoing Articles.

### Previous text

None.

### Background

Article 37 derives from Article 34 of the Stockholm draft (I Final Record 119) the first paragraph of which provided that

Protected persons who, at the outset of the conflict, are confined pending trial, or serving a sentence involving loss of liberty, shall not be subjected to more stringent conditions owing to the outbreak of hostilities.

At the Geneva Conference, the United States delegation offered the following amendment (III Final Record 122):

Protected persons who are confined pending proceedings or subject to a sentence involving loss of liberty, shall during their confinement, be humanely treated, and, on their liberation, fully benefit by the provisions of the present Convention.

While agreeing with the principle that the penal treatment of an alien should not be made more severe by reason of the outbreak of hostilities, the United States sought to make clear that this principle would not preclude the internment, for security reasons, of a protected person previously at liberty on bail while awaiting trial on criminal charges or of increasing the security of the confinement of a convicted protected person. See II A Final Record 655-656, 739, 823-824. Accordingly, the first paragraph of Section 37 was revised to its present form as to permit such action.

## ARTICLE 38

### Substance

This article provides that except for special measures of control and security imposed upon protected persons by the detaining power, their situation "shall continue to be regulated in principle, by the provisions concerning aliens in time of peace." This general standard of humane treatment is reinforced by a specification of rights which must be accorded to protected persons (subject only to the security provisions of Article 5). These are rights (1) to receive relief sent to them, (2) to have the same access to medical and hospital treatment as nationals of the detaining power, (3) to practice their religion, (4) to have the same freedom as nationals to move from areas exposed to the dangers of war, and (5) in the case of children, pregnant women and mothers of young children, to receive any preferential treatment accorded by the detaining power to those classes among its own nationals.

### Present text

With the exception of special measures authorized by the present Convention, in particular by Articles 27 and 41 thereof, the situation of protected persons shall continue to be regulated, in principle, by the provisions concerning aliens in time of peace. In any case, the following rights shall be granted to them:

- (1) They shall be enabled to receive the individual or collective relief that may be sent to them.
- (2) They shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned.



- (3) They shall be allowed to practise their religion and to receive spiritual assistance from ministers of their faith.
- (4) If they reside in an area particularly exposed to the dangers of war, they shall be authorized to move from that area to the same extent as the nationals of the State concerned.
- (5) Children under fifteen years, pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned.

Previous text

None.

Background

Article 38 is derived from all or parts of Articles 13, 24, 27 and 35 of the Stockholm draft. The Geneva Conference significantly revised portions of these Articles from rules as to how a belligerent government should treat its own nationals and protected persons, to rules requiring that in specified matters protected persons shall be accorded the same treatment as nationals of the detaining power.

The provision of Article 38 that protected persons shall be treated "in principle" like aliens in time of peace, expressly recognizes that this principle will be modified by security measures taken by a detaining power in accordance with the last paragraph of Article 27 and 41.



## ARTICLE 39

### Substance

Article 39 deals with the means of support of protected persons in the territory of a belligerent nation. If, as a result of the war, they have lost their employment, they must be accorded, subject to security considerations, the same opportunity as nationals of the detaining power to find paid employment. If the detaining power imposes upon a protected person such restraints or other methods of control as prevent him from supporting himself or from finding paid employment on reasonable conditions, the detaining power must support him and his dependents. The last paragraph of Article 39 gives protected persons the right to receive (monetary) allowances from their home country, the Protecting Power, or relief societies, in addition to their right under Article 38 to receive relief that may be sent to them.

### Present text

Protected persons who, as a result of the war, have lost their gainful employment, shall be granted the opportunity to find paid employment. That opportunity shall, subject to security considerations and to the provisions of Article 40, be equal to that enjoyed by the nationals of the Power in whose territory they are.

Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents.

Protected persons may in any case receive allowances from their home country, the Protecting Power, or the relief societies referred

to in Article 30.

Previous texts

None.

Background

Every belligerent country restricts, for reasons of security, the types of employment that may be pursued by alien enemies. Article 39 in no way prohibits such restrictions. It is simply designed to assure means of support for those alien enemies and other protected persons who, as a result of such security restrictions, become unable to support themselves.

The provision of the third paragraph of Article 39 that protected persons may receive allowances from their home countries, Protecting Power, etc., would be subject, for example, in the case of civilian internees to reasonable restrictions by the detaining power as to the amounts of money they may have in their possession.

During World War II, financial assistance was extended to Americans in enemy territory through the Protecting Power and, exceptionally, through the International Committee of the Red Cross (ICRC). Those able to qualify for such assistance received from the Swiss (or the ICRC) monthly payments at rates established for their country of residence. The payments varied from \$70 to \$80 (later \$60 to \$130) per month for the head of a household with lesser amounts for family members. Payments to prisoners of war and interned civilians, for whose care the Detaining Power was responsible, were for the purpose of providing miscellaneous personal needs only and, therefore,

were in general about 10% of the country maximum. In addition, extra assistance essential for the health and safety of American nationals, for reasonable legal defense, et cetera, was authorized. Promissory notes were taken for all payments and reimbursement (without interest) was required, in so far as possible, from relatives, friends or business associates in this country, or from the individual himself at the end of hostilities.

This financial assistance was designed to entirely supplant the transfer of any other funds to the Americans concerned. Such assistance was particularly needed in the Far East. As the war progressed, galloping inflation there and enemy intransigency resulted in acute distress for Americans and a much heavier financial burden to the United States than had been expected. The outcome of the arrangements was relatively satisfactory in other areas.

Payments to enemy nationals in the United States were permitted through the Protecting Power and, exceptionally, through the ICRC.

ARTICLE 40Substance

Article 40 is concerned with the important subject of the extent to which and the conditions under which alien enemies and other protected persons may be compelled to work in the territory of a belligerent state. Protected persons other than alien enemies, i.e., neutral and allied aliens who do not enjoy diplomatic protection, may be compelled to work to the same extent as nationals of the detaining state. Alien enemies also may be compelled to work to the same extent as nationals of the detaining state, but subject to the further limitation that they may only be compelled to do "work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings and which is not directly related to the conduct of military operations." Under Article 51, protected persons in occupied territory may also be required to perform work necessary for needs of the army of occupation or for public utility services.

Present text

Protected persons may be compelled to work only to the same extent as nationals of the Party to the conflict in whose territory they are.

If protected persons are of enemy nationality, they may only be compelled to do work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings and which is not directly related to the conduct of military operations.

In the cases mentioned in the two preceding paragraphs, protected persons compelled to work shall have the benefit of the same working



conditions and of the same safeguards as national workers, in particular as regards wages, hours of labour, clothing and equipment, previous training and compensation for occupational accidents and diseases.

If the above provisions are infringed, protected persons shall be allowed to exercise their right of complaint in accordance with Article 30.

#### Previous texts

Article 23 of the Hague Regulations of 1907 provides that:

"A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war."

#### Background

In view of the shocking abuses in compulsory labor in Nazi Germany (see Nazi Conspiracy and Aggression, pp. 72 et seq.), it was inevitable that the Civilian Convention should define the circumstances under which alien enemies and other protected persons may be compelled to work in the territory of a belligerent state. Article 40 evolved from Article 37 of the Stockholm draft which provided that:

"Protected persons may only be required to do work which is normally necessary for the feeding, sheltering, clothing, transportation and health of human beings, but they may not be employed in work that is of value in assisting the conduct of active military operations."

At the same time, the phrase "protected persons" was defined in the Stockholm draft to include all aliens -- enemy, allied and neutral --



in the territory of a belligerent country. The net result would have been severe restrictions on the work which aliens might be compelled or even permitted to perform in wartime. This could have produced important consequences in countries such as the United States which have large resident alien populations and which sometimes employ large numbers of foreign workers.

Accordingly, as a result of amendments offered by the United States and other delegations, the Geneva Conventions revised Article 40 to its present form. The principle that alien enemies shall only be compelled to do specified types of work not directly related to the conduct of military operations reflects the accepted belief that individuals should not be compelled to engage in hostilities against the country of which they are nationals. See Article 23 of the Hague Regulations, supra. In addition, all protected persons may be compelled to work only to the same extent and under the same working conditions and safeguards as nationals of the belligerent state. It should be noted that Article 40 relates only to compulsory labor, and that all protected persons, including alien enemies, may engage voluntarily in any kind of work without regard to the provisions of Article 40. All protected persons compelled to work "shall have the benefit of the same working conditions and of the same safeguards" as nationals of the detaining power, "in particular as regards wages, hours of labour, clothing and equipment, previous training and compensation for occupational accidents and diseases." In the event of violation of these provisions for non-discriminatory treatment, protected persons must be allowed to complain to the Protecting Power, the International Committee of the Red Cross,

or the national Red Cross Society in the detaining country, in accordance with Article 30. It should be noted that under Article 95 (discussed hereafter) protected persons who are interned may not be compelled to work except in connection with the operation and maintenance of internment facilities.

## ARTICLE 41

### Substance.

Article 41, together with Articles 42 and 43, contains important provisions with respect to such security measures as internment and assigned residence. The first paragraph of Article 41 provides that a belligerent power may not impose upon protected persons in its hands measures of control more severe than assigned residence or internment. Under the second paragraph of Article 41, protected persons who lose their means of support because they are placed in assigned residence must be supported by the detaining power, which "shall be guided as closely as possible by the standards of welfare" prescribed for internees by Part III, Section IV (Articles 79-141) of the Convention.

### Present text.

Should the power in whose hands protected persons may be consider the measures of control mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more severe than that of assigned residence or internment, in accordance with the provisions of Article 42 and 43.

In applying the provisions of Article 39, second paragraph, to the cases of persons required to leave their usual places of residence by virtue of a decision placing them in assigned residence elsewhere, the Detaining Power shall be guided as closely as possible by the standards of welfare set forth in Part III, Section IV of this Convention.

### Previous texts.

None.

### Background.

The first clause of the first paragraph of Article 41 recognizes, as does the last paragraph of Article 27, that in wartime a belligerent nation may properly apply to aliens, and particularly to alien enemies, a variety of restrictions and controls short of assigned residence or internment. For example, during World War II, the United States and other countries prohibited alien enemies from entering certain areas and from possessing weapons, cameras and radio transmitters. This introductory reference to "the measures of control mentioned in the present Convention" also recognizes that protected persons remain subject to the penal laws of the country in which they reside. See Report of Committee III of the Geneva Conference on what was then Article 38, IIA Final Record 825.

Thus, the first paragraph of Article 41 means that the most severe preventive measures which may be applied to protected persons are assigned residence and internment. Assigned residence consists of requiring an individual to reside in a designated place. While assigned residence is unknown in the United States, American citizens abroad have been placed in assigned residence, as in remote villages, often without means of support. Thus, it was regarded as important to establish the principle that individuals placed in assigned residence should be treated in accordance with the standards applicable to internees. In the United States, internment has been the most drastic preventive measure applied to alien enemies.

At the Geneva Conference, Committee III had adopted a provision that "Each decision [to intern or place in assigned residence] shall be taken individually". (IIA Final Record 757-758.) This language suggested that in time of emergency a belligerent must make a time-consuming appraisal



of each case before acting to protect its security. Accordingly, in Plenary Meeting of the Conference, the United States offered an amendment, which was adopted, deleting the committee amendment. As a result, a belligerent power remains free to move rapidly in initially interning protected persons or placing them in assigned residence, but must provide the opportunity for prompt reconsideration of such action required by Article 43.

The second paragraph of Article 41, reinforcing the second paragraph of Article 39, emphasizes that the detaining power's obligation to support protected persons (and their dependents) who have lost their means of support as a result of being placed in assigned residence, shall be measured as closely as possible by the standards of welfare which the Convention prescribes for internees. This provision is intended to prevent belligerents from using assigned residence as a cheap form of internment in which they assume no responsibility for the welfare of the individuals involved.

liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety.

This statute applies only to alien enemies. Executive determinations under it are subject to judicial review in habeas corpus proceedings only to determine whether the individual involved is an alien enemy and the existence of a state of war or other condition under which the act applies. Ludecke v. Watkins, 335 U. S. 160; Jaeger v. Carusi, 342 U. S. 347.

The restriction of internment of protected persons to cases in which "the security of the Detaining Power makes it absolutely necessary," is intended to prevent indiscriminate and unnecessary internment of alien enemies and other protected persons. It is not intended to preclude the internment of any person whose continued liberty the detaining power reasonably believes would endanger its security. Since internment is a preventive measure, rather than a punishment for a completed crime, it involves a complicated decision, based upon such factors as the age, health, sex, background, conduct and associations of a particular alien, viewed in the context of the military situation and the adequacy of lesser measures of control. Such a decision cannot be made with mathematical precision, and every responsible government must be free to favor its own security in doubtful cases. Necessarily, that decision is one to be made by the administrative security authorities of the detaining power,

In thus requiring a discriminating use of the internment power, Article 42 is consistent with the practice of the United States under the Alien Enemy Act in World War II during which, out of about one million aliens enemies in this country, ✓ no more than 4,132 were interned at one time, ✓ Article 42 is also consistent with the provisions of the Emergency Detention Act of 1950 (50 U. S. C. 811) under which the standard for detention is "reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or sabotage."

Reading Article 42 with Article 43 and the history of the latter article, it is clear that the final decision as to the necessity for interning a protected person may be made after he has been interned.

The second paragraph of Article 42 contemplates the internment of protected persons at their own request when it appears that such is necessary for their welfare, as to protect them from injury arising out of the bitterness of wartime.

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✓ Annual Report of the Attorney General (1942) 219.

✓ Annual Report of the Attorney General (1943) 5.

## ARTICLE 43

### Substance.

The first paragraph of Section 43 requires a detaining power to establish a procedure for reconsideration of the cases of protected persons who have been interned or placed in assigned residence. Thus, such persons shall be given an opportunity to seek reconsideration of such actions as soon as possible by an appropriate court or administrative board designated for that purpose by the detaining power. Also, while a protected person remains interned or in assigned residence, his case must be reviewed at least twice yearly to determine whether such measures remain necessary. The second paragraph of Article 43 requires the detaining power, as rapidly as possible, and unless the protected persons concerned object, to furnish the Protecting Power with the names of protected persons who have been interned or placed in assigned residence or released therefrom, and to notify the Protecting Power of the decisions of the courts or boards referred to in the first paragraph of Article 43. These obligations of disclosure and reporting to the Protecting Power are a crucial safeguard against historic abuses, but they are nevertheless subordinate to the overriding security requirements of Article 5.

### Present text.

Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically,



and at least twice yearly, give consideration to his or her case with a view to the favourable amendment of the initial decision, if circumstances permit.

Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of any protected persons who have been interned or subjected to assigned residence, or who have been released from internment or assigned residence. The decisions of the courts or boards mentioned in the first paragraph of the present Article shall also, subject to the same conditions, be notified as rapidly as possible to the Protecting Power.

Previous texts.

None.

Background.

The requirements of the first paragraph of Article 43 for reconsideration of the cases of protected persons interned or placed in assigned residence are in substantial accord with the procedures followed by the United States during World War II. Under those World War II procedures, the United States quickly and without formal procedures interned thousands of enemy aliens. Thereafter, there were established over 100 Alien Enemy Hearing Boards, composed of three or more outstanding citizens including a lawyer, to review these cases and to recommend to the Attorney General whether these individuals should continue to be interned, paroled, or released unconditionally.

The purpose of the first paragraph of Article 43 is to provide a review of initial internment and assigned residence decisions by a group, administrative or judicial, as a safeguard against mistaken or

oppressive action by a single official. (IIA Final Record 738.) Article 43 does not specify whether such administrative boards must be empowered to make final decisions or whether their function may be defined as making recommendations to a higher governmental authority, as in the case of the World War II alien enemy hearing boards in this country. Without some centralized control, it might be impossible to administer such measures without discrimination. However, as pointed out repeatedly at the Geneva Conference (IIA Final Record 659-660, 738-739), such security decisions, like departure decisions under Article 35, cannot be made by a board which is completely divorced from the agencies responsible for national security. It is clear that Article 43 was not intended to have such results. Rather, as stated in the report of Committee III of the Geneva Conference (IIA Final Record 823), in discussing the similar reconsideration procedure of Article 35,

What really matters is that each case should be impartially considered, or reconsidered, by an authority comprising several persons, and not merely by a police official; whether such a body is part of the administration or the judiciary is of comparatively minor importance.

This purpose will be satisfied if the responsible officer or agency making the ultimate decision, as the Attorney General in World War II, receives and considers the recommendation of a board which has reviewed the circumstances of the individual case. The procedures contemplated by Sections 105-110 of the Emergency Detention Act of 1950 would more than satisfy the requirements of Article 43.

Moreover, by providing that such reconsiderations shall be made by an "appropriate court or administrative board designated by the Detaining Power for that purpose," Article 43 clearly would not require the United States to subject internment decisions to judicial review, contrary to the prevailing United States rule. Nor would it preclude the establishment of such administrative boards within an existing and appropriate governmental agency, such as the Department of Justice in this country. (IIA Final Record 738-739.)

The further provision of the first paragraph of Article 43 for periodic reconsideration of internment decisions also is in accord with prior American practice in that it recognizes that changes in the general security situation, as well as additional information concerning the internee, may warrant his later release or parole.

The requirement of the second paragraph of Article 43 that actions and decisions of the detaining power be reported to the Protecting Power, is subject, not only to the overriding security provisions of Article 5, but to the further condition that the protected persons concerned do not object to such disclosures. The purpose of the second condition is to enable internees to prevent disclosures as to their status which might, for example, subject their families in their home countries to persecution.

ARTICLE 44Substance

Article 44, recognizing certain aspects of the modern refugee problem, provides that a belligerent state in applying its security measures shall not automatically treat as enemy aliens persons who, while legally nationals of an enemy state, are refugees from that state and who therefore are not actually protected by any government. Similarly, Article 44 merely requires that a belligerent power consider individually, rather than on a class basis, the extent to which such persons should be subjected to security measures.

Present text

In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of any enemy State, refugees who do not, in fact, enjoy the protection of any government.

Previous texts

None.

Background

Article 44 originated in a proposal by the Israeli Delegation at the Geneva Conference, as follows (IIA Final Record 660):



In applying the measures of detention and internment provided for in the preceding Articles 32 and 40, the Detaining Power shall not, in principle, consider persons deprived of nationality, the stateless or those unprotected by any Government as being enemy aliens.

While the obvious purpose of the proposal was received sympathetically, certain delegations wished to insure that its phrasing would not prevent the application of security measures to ostensible refugees suspected of being enemy agents in disguise. A series of drafts failed to produce one which was generally satisfactory. (IIA Final Record 758.)

As a result, when the present text was adopted in the Plenary Conference, the United Kingdom Delegation recorded its understanding of Article 44, in the following terms (IIB Final Record 413):

Mr. SINCLAIR (United Kingdom): The United Kingdom Delegation desires that it should be placed on the record of the Conference that in accepting Article 40A in the form in which it has been adopted; they agree with the statement contained in the Report of Committee III that its effect is to do no more than secure the principle that refugees who may remain de jure enemy aliens will not be automatically treated as enemies and that consequently the adoption of the Article cannot in any way affect the right of the State to submit any such person to internment or any other recognized measure of control when there is any additional reason that renders the taking of such action necessary in the interest of the State in a moment of national crisis.

The United States Delegation also declared that such was its understanding of Article 44.

In view of the careful investigations required to distinguish bona fide refugees from disguised enemy agents, it would seem that the less onerous restrictions applied to alien enemies, such as to travel and possession of weapons and cameras, may be imposed upon all apparent refugees who are technically of enemy nationality. On the other hand, such heavy restraints as internment should be imposed or maintained only

upon a consideration of the circumstances of particular cases as soon as possible. While such a realistic construction of Article 44 adds little to the provisions of Articles 42 and 43, it satisfies the humanitarian purpose of Article 44. To use an example from World War II, the United States did not automatically and for all purposes treat as enemy aliens those German nationals who were actually Jewish refugees from Nazi oppression.

## ARTICLE 45

### Substance

The first and second paragraphs of Article 45 provide that protected persons shall not be transferred to a Power which is not a party to the Civilian Convention, but that this principle shall not prevent the repatriation of protected persons, or their return to their country of residence after the cessation of hostilities. Article 45 permits the transfer of protected persons to a Power which is a party to the Convention only under the same conditions as Article 12 of the Prisoner of War Convention prescribes for the transfer of prisoners of war. Article 45 also forbids the transfer of a protected person to a country where he may have reason to fear persecution for his political opinions or religious beliefs. Nothing in Article 45 precludes extradition, pursuant to extradition treaties made prior to the outbreak of hostilities, and even to a State not a party to the Convention, of protected persons accused of ordinary criminal offenses.

### Present text

Protected persons shall not be transferred to a Power which is not a party to the Convention.

This provision shall in no way constitute an obstacle to the repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities.

Protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention and after the Detaining Power has satisfied itself of the willingness and ability of

such transferee Power to apply the present Convention. If protected persons are transferred under such circumstances, responsibility for the application of the present Convention rests on the Power accepting them, while they are in its custody. Nevertheless, if that Power fails to carry out the provisions of the present Convention in any important respect, the Power by which the protected persons were transferred shall, upon being so notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the protected persons. Such request must be complied with.

In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.

The provisions of this Article do not constitute an obstacle to the extradition, in pursuance of extradition treaties concluded before the outbreak of hostilities, of protected persons accused of offences against ordinary criminal law.

#### Prior texts

None.

#### Background

Article 45 deals with the responsibility for treatment in accordance with the Convention of protected persons who are transferred by a belligerent power to another country. For example, during World War II, certain Latin-American countries allied with the United States transferred to this country a number of German nationals. Under Article 45, such a transfer of protected persons can be made only to a country



which is a party to the Civilian Convention, and only under the principles of responsibility for their treatment prescribed by Article 45.

The corresponding provision (Article 41) of the Stockholm draft provided that where protected persons were transferred to another power, the transferring and receiving powers were jointly responsible for their treatment in accordance with the Convention. At the Geneva Conference, this principle of joint responsibility was challenged, as it also was under what is now Article 12 of the Prisoner of War Convention. On the one hand, it was urged that a detaining power should not be free to shrug off responsibility for the treatment of protected persons by transferring them to another country. On the other hand, it was contended that the principle of joint responsibility was impractical in that the transferring power could not fairly be held responsible for actions of the receiving power beyond the former's control. These views were compromised in the present Article 45 by placing primary responsibility upon the receiving power and a contingent responsibility upon the transferring power.

The Soviet Union, Albania, Bulgaria, Hungary, Poland, Rumania, Czechoslovakia, and Yugoslavia have ratified or signed the Civilian Convention with reservations to Article 45 in which they insist upon the principle of joint responsibility.

The term "transfer", as used in Article 45, can only be defined broadly as a movement of one or more protected persons at the direction and under the control of a State. Thus, it does not include voluntary covenants of protected persons which are merely permitted by the detaining power. Moreover, the second paragraph of Article 45 provides

that the prohibition against transfer of protected persons to a power which is not a party to the Convention shall not prevent the repatriation of protected persons or their return to their country of residence after the cessation of hostilities. The last clause refers to the fact that some protected persons in the hands of a detaining power may be legal residents of a country other than that of which they are nationals, so that their repatriation or return may be to the country of residence rather than the country of nationality. The repatriation or return of protected persons may be made regardless of whether the receiving country is a part to the Convention or whether hostilities have ceased.

The last paragraph of Article 45 specifies that none of the other provisions of the Article are to preclude the extradition of protected persons accused of ordinary criminal offenses, pursuant to extradition treaties in existence prior to the outbreak of hostilities. That is, under these conditions, a protected person can be extradited to a country which is not a party to the Convention. It would appear, however, that under Article 45 a detaining power may not, during the period of hostilities in which the Convention applies, deport protected persons pursuant to its ordinary deportation laws to a country which is not a party to the Convention. A proposal by the United States and other delegations to except ordinary deportation from the scope of Article 45 was rejected by the Drafting Committee of Committee III (III Final Record 129), presumably because of the difficulty of distinguishing deportation from other transfers in a way which would preclude evasion of Article 45.

The fourth paragraph of Article 45 prohibits the transfer of a protected person to any country where he may have reason to fear per-

secution for his political opinions or religious beliefs. This principle is similar to the provision of Section 243 (b) of the Immigration and Nationality Act of 1952 (66 Stat. 214) that "The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason."

## ARTICLE 46

### Substance

Article 46 provides that the wartime restrictions and controls placed upon protected persons shall be removed as soon as possible after the close of hostilities. It further provides that restrictive measures regarding the property of protected persons shall be cancelled as soon as possible, but subject to the further limitation that the cancellation of such property measures be "in accordance with the law of the Detaining Power."

### Present text

In so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons shall be cancelled as soon as possible after the close of hostilities.

Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities.

### Background

Article 46 is consistent with the practice of the United States in terminating wartime restrictions upon alien enemies as soon as possible. Thus, the powers granted by the Alien Enemy Act are, in effect, limited to the period of declared war. Jaegeler v. Carusi, 342 U. S. 347. While the close of hostilities may precede by some time the termination of a declared state of war (as by a treaty or statute), Ludecke v. Watkins, 335 U. S. 160, the United States has kept in internment substantially after the close of hostilities only those enemy aliens whom it desired to deport as soon as conditions would permit. Such continued internment



would be permitted under Article 46, and, generally, wartime restrictions may be maintained after the close of hostilities while necessary to the security of the detaining power. It should be noted that while, under Article 6, the Civilian Convention generally ceases to apply in the territory of a belligerent on the general close of military operations, protected persons who remain in detention after that date continue, under that Article, to enjoy the protection of the Convention.

The second paragraph of Article 46, dealing with the cancellation of restrictive measures affecting the property of protected persons, originated in a proposal offered by the Italian Delegation at the Geneva Conference as an amendment to Article 42 of the Stockholm draft. The purpose of the amendment was to require the restoration at the close of hostilities of the property of alien enemies which had been seized by the detaining power. This amendment was rejected by Committee III after it had been opposed by the United States on the ground that it might cut across the alien enemy property laws of various countries. IIA Final Record 740. In Plenary Conference, the Italian amendment was revived and adopted in its present form of a general principle subject to the legislation of the detaining State. IIB Final Record 414-415. In other words, Article 46 would not affect the Trading With the Enemy Act (50 U. S. C. 1) or preclude Congress from enacting similar legislation dealing with enemy-owned property.

### SECTION III - OCCUPIED TERRITORIES

Section III, consisting of Articles 47 to 78 inclusive, consists of rules governing the treatment of protected persons in occupied territory. The Nazi atrocities in occupied territory during World War II emphasized the inadequacy of the limited and general rules governing military occupations contained in Articles 42 to 56 of the Hague Regulations of 1907. Articles 47 to 48 of the Civilian Convention, together with the provisions of Part II and Section I of Part III which also apply to occupied territory, prescribe additional principles of protection and seek to prevent evasion by spelling out in greater detail than the Hague Regulations the obligations of the occupying power. It should be noted that the Civilian Convention supplements rather than replaces the Hague Regulations, the pertinent portions of which are set forth in the appendix. Thus, those articles of the Hague Regulations (such as Articles 45 and 55) which have no counterpart in the Civilian Convention continue to bind states which are parties to both the Hague and Geneva Civilian Conventions. And states which are bound by the Hague Conventions, but not by the Civilian Convention, will remain subject to the Hague Regulations relating to occupied territory.

"Occupation" or "occupied territory" have not been defined by treaty beyond the factual test of Article 42 of the Hague Regulations which provide as follows:

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

Article 2 of the present Convention provides that it "shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance." It is clear that the Convention applies only in cases of hostile occupation, and does not apply in liberated territory of an allied country such as France in 1944 in relation to the United States. Pursuant to Article 6, the Convention shall cease to apply in occupied territory one year after the general close of military operations; "however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory" by the provisions of Articles 1 to 12, 27, 29-34, 47, 49, 51, 52, 53, 59, 61-77, and 143.

As pointed out under Article 6, supra, its general effect is to relieve an occupying power of its affirmative obligations after one year of occupation, while keeping in effect for the duration of the occupation other provisions designed to protect the local population from mistreatment.

Under Article 4, "protected persons" in occupied territory include nationals of the occupied country, national of neutral states, and nationals of a state which, although co-belligerent with the occupying power, lacks normal diplomatic representation with the occupying power. Although not specifically mentioned in Article 4, nationals of a state co-belligerent with a state the territory of which is occupied should be treated as protected persons under Section III.

ARTICLE 47

Substance.

Protected persons in occupied territory shall not be deprived of the benefits of the Convention by any change in the government resulting from occupation, by any agreement with a puppet government, or by a premature annexation of occupied territory by the occupying power.

Present text.

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

Prior texts.

None.

Background.

Under Article 6, the inhabitants of occupied territory retain the full protection of the Civilian Convention for a year after the general close of military operations, by which is meant the end of military operations not only against the occupied country but also its allies. The Convention specifically precludes evasion of Article 6 by such



devices as agreements with a puppet government established by the occupying power or by annexation of the occupied territory by the occupying power before the "general close of military operations." Thus, Article 11 provides that its Protecting Power provisions cannot be waived by a government "which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or even a substantial part, of the territory of the said Power is occupied."

Similarly, under Article 47, protected persons in occupied territory may not be deprived of the benefits of the Convention by an agreement between the occupying power and any Quisling or puppet government which it has installed. Also, Article 47 specifically states that such protected persons shall not be deprived of the benefits of the Convention by any annexation by the occupying power of all or part of the occupied territory. This provision does not purport to forbid all future annexations of territory. Rather, it is intended to preclude evasion of the Convention by premature annexation, i.e., annexation before the "general close of military operations", such as Germany's purported annexations of occupied territory during World War II. It should be noted that the argument that annexation during a war made the Hague Regulations inapplicable was rejected by the International Military Tribunal (Nazi Conspiracy and Aggression: Opinion and Judgment, p. 83) as follows:

A further submission was made that Germany was no longer bound by the rules of land warfare in many of the territories occupied during the war, because Germany had completely subjugated those countries and incorporated

them into the German Reich, a fact which gave Germany authority to deal with the occupied countries as though they were part of Germany . . . The doctrine [of subjugation] was never considered to be applicable so long as there was an army in the field attempting to restore the occupied countries to their true owners, and in this case, therefore, the doctrine could not apply to any territories occupied after the 1st September 1939.

ARTICLE 48

Substance.

Protected persons who are not nationals of the occupied territory may leave the territory in accordance with the principles and procedures prescribed by Article 35 for departures of protected persons from the home territory of a belligerent.

Present text.

Protected persons who are not nationals of the Power whose territory is occupied, may avail themselves of the right to leave the territory subject to the provisions of Article 35, and decisions thereon shall be taken according to the procedure which the Occupying Power shall establish in accordance with the said Article.

Prior texts.

None.

Background.

The practical effect of Article 48 is that neutral aliens must be permitted to leave the occupied territory unless their departure is contrary to the national interests of the occupying power. They are also entitled to have denials of their requests for permission to depart reconsidered by an appropriate board designated by the occupying power.

ARTICLE 49

Substance.

The deportation or transfer of protected persons, individually or en masse, from occupied territory is prohibited, except that an occupying power may undertake temporary and humane evacuation of a given area for military reasons or the protection of the local population. Protected persons shall not be detained in dangerous areas unless the security of the population or imperative military reasons so demand. An occupying power "shall not deport or transfer parts of its own civilian population into the territory it occupies."

Present text.

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation



is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

Prior texts.

None.

Background.

In World War II, at least 5,000,000 persons in occupied territory were taken by force to slavery or death in Nazi Germany.

Nazi Conspiracy and Aggression: Opinion and Judgment, pp. 72-77.

The charter of the International Military Tribunal (Nuremberg) defined as a war crime "deportation to slave labor or for any other purpose of civilian population of or in occupied territory."

The first paragraph of Article 49 prohibits individual or mass deportations of protected persons from occupied territory to the territory of the occupying power or elsewhere for any purpose.

It does not prohibit protected persons from voluntarily leaving occupied territory when so authorized by the occupying power. See Article 48.

The second, third and fourth paragraphs of Article 49 carve out a single exception to the general prohibition against such compulsory transfers or deportations. This exception is that the occupying power may temporarily and where unavoidable for material reasons evacuate the population of a given area to a point outside the occupied territory "if the security of the population or imperative military reasons so demand." "Imperative military reasons" would include, for example, the preventive measure of evacuating the inhabitants of a particular area who were suspected by the occupying power of supporting a band of guerrillas. Where the occupied area involved is an island or a narrow strip of land, it is obvious that either the welfare of the inhabitants or the legitimate military necessities of the occupying power, coupled with the geographical situation, may require the temporary removal of such persons from the occupied territory. The protected persons thus evacuated, whether to points within or without the occupied territory, shall be transferred back to their homes "as soon as hostilities in the area in question have ceased," and the occupying power shall insure, "to the greatest practicable extent, that such movements of protected persons are carried out under satisfactory conditions of housing, health, safety, nutrition and family unity."

It was realized that military considerations would sometimes preclude advance notice to the Protecting Power of such evacuations or

transfers. Accordingly, paragraph four of Article 49 only requires that the Protecting Power be informed of such evacuations and transfers as soon as they have taken place.

The fifth paragraph of Article 49 provides that "The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand." The exception in terms of the "security of the population" reflects the fact that a military commander of the occupation forces usually is better informed than the local civilian inhabitants as to whether their safety will be furthered by moving or staying where they are. The exception for "imperative military reasons" of the occupying power recognizes that the latter simply will not permit the local civilians to leave a dangerous area if in doing so they would clog transportation routes needed by the occupying forces.

The sixth paragraph of Article 49 provides that "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". This prohibits an occupying power from colonizing occupied territory with its own nationals. Nazi Conspiracy and Aggression: Opinion and Judgment, p. 66. It was not intended to preclude an occupying power from utilizing its civilian officials in the government of occupied territory. Similarly, it would not preclude an occupying power from deporting from its home territory to the occupied territory nationals of the occupied territory.

ARTICLE 50

Substance.

The occupying power shall facilitate the operation of institutions in occupied territory devoted to the care and education of children, and shall facilitate the identification of children and the registration of their parentage. Where the local institutions are inadequate, the occupying power must arrange for the support and education of children who are orphaned or separated from their families. The occupying power must not interfere with pre-existing arrangements in the occupied territory for special treatment of children under 15, expectant mothers, and the mothers of children under 7.

Present text.

The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near



relative or friend.

A special section of the Bureau set up in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available.

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.

Prior texts.

None.

Background.

The language and history of Article 50 make it clear that the responsibility of an occupying power for the welfare of the children in occupied territory is limited primarily to facilitating the work of local institutions devoted to this task; it is only if such institutions are inadequate that the occupying power becomes responsible for the care of such children. See report of Committee III of the Geneva Conference, IIA Final Record 828. Under Article 6, an occupying power is bound by Article 50 for only the first year of a military occupation.

ARTICLE 51

Substance.

The occupying power may not compel protected persons to serve in its armed or auxiliary forces. The types of work which the occupying power may compel protected persons to perform, and the conditions under which such compulsory labor is performed, are defined.

Present text.

The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country.

Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations.

The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.

The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to

their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.

In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character.

Prior texts.

Article 23, last paragraph of the Hague Regulations provides that

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

Article 52, paragraph one, of the Hague Regulations provides that

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Background.

The abuses of forced labor in occupied territory during World War II are the genesis of Article 51.

a. Military service. The first paragraph of Article 51 provides that "The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces." This added little if anything to the provision of Article 23 of the Hague Regulations. However, the following sentence of Article 51 adds that "No pressure or propaganda which aims at securing voluntary enlistment is permitted."

While the precise meaning of this prohibition of "propaganda" is not clear, it would clearly outlaw as compulsion and propaganda subjecting a protected person to brain-washing, but would not prohibit truly voluntary enlistments or infringe the principle of freedom of information.

b. Compulsory labor. Protected persons in occupied territory (and who are not interned, see Article 95) may voluntarily perform any kind of work for the occupying power. Under paragraph two, an occupying power may not compel protected persons who are not over 18 years of age to perform any kind of work. Other protected persons may be compelled by the occupying power to do "work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied territory." It will be noted that while Article 52 of the Hague Regulations authorized compulsory labor from the inhabitants of occupied territory only "for the needs of the army of occupation," Article 51 of the present Convention greatly broadens the categories of authorized compulsory labor. This was done in part on the insistence of the United States that an occupying power on which the present Convention places such affirmative obligations for the welfare of the occupied territory, must be empowered to compel the inhabitants of such territory to work for their own benefit. IIA Final Record 776.



Article 51 further provides that

\* \* \* Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.

These provisions are a reiteration or refinement of the portions of Articles 23 and 52 of the Hague Regulations quoted above.

The last paragraph of Article 51 provides that "In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character."

c. Conditions of labor. The third paragraph prescribes the working conditions under which work required from protected persons must be performed. Such work must be carried on only in the occupied territory in which such workers are; that is, they may not be compelled to work in another country occupied by the occupying power. So far as possible, protected persons compelled to work shall be kept in their usual places of employment. They shall be paid a fair wage and employed at work which is not beyond their abilities. Article 51 further provides as to such compulsory labor that

\* \* \* The legislation in force in the occupied territory concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.

The use of the phrase "legislation in force" recognizes that such protective labor legislation may be modified under certain circumstances by the occupying power. Thus, the quoted provisions do not bind an

occupying power to maintain the peacetime labor standards of the occupied country, but rather to provide to protected persons compelled to work the same working conditions as are enjoyed by voluntary workers. Thus, the report of Committee III of the Geneva Conference states that (IIA Final Record 828-829)

\* \* \* the Committee have included a provision that the legislation in force in the occupied country concerning working conditions, such as wages, hours of work, equipment, preliminary training and protection against occupational accidents, shall continue to be applicable to the protected persons undertaking compulsory labour. The Committee recognizes that this legislation is likely to change from time to time during the occupation, and in particular that the appropriate wages may well be varied if prices rise to an appreciable extent, but considers that sufficient provision has been made for such variations by the reference to the legislation "in force."

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ARTICLE 52

Substance and present text.

No contract, agreement or regulation shall impair the right of any worker, whether voluntary or not and wherever he may be, to apply to the representatives of the Protecting Power in order to request the said Power's intervention.

All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.

Prior texts.

None.

Background.

It should be emphasized that the last paragraph prohibits only measures of the occupying power intended by it to create unemployment so as to induce workers in occupied territory to work for the occupying power. The report of Committee III of the Geneva Conference specifically recognizes that "during an occupation a great number of new factors would be certain to arise which would affect the employment of certain sections of the population." IIA Final Record 829. Thus, an occupying power is not required to divert scarce supplies to preserve employment opportunities in non-essential industries.

### ARTICLE 53

#### Substance.

The occupying power is prohibited from destroying property owned by the State, private persons, or organizations "except where such destruction is rendered absolutely necessary by military operations."

#### Present text.

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

#### Prior texts.

Article 23 of the Hague Regulations of 1907 provides that

"it is especially forbidden \* \* \* to destroy or seize the enemy's property, unless such destruction or seizure ~~be~~ be imperatively demanded by the necessities of war."

Article 46 of the Hague Regulations of 1907 provides that

"private property \* \* \* must be respected"

Article 56 of the Hague Regulations of 1907 provides that

"The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

"All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made subject of legal proceedings."



Background.

In prohibiting the wanton destruction (i.e., not justified by military necessity) by the occupying power of property located in occupied territory, Article 53 differs from the prior Hague Regulations only in the express protection which it provides for all property owned by governmental bodies and cooperative organizations. This added emphasis reflects the fact that in Communist states much property of all kinds is owned by the government, and in those and other countries cooperative groups own large amounts of property.

The excepting clause, "where such destruction is rendered absolutely necessary by military operations," must be read in the light of the realities and objectives of war as permitting an occupying power to dismantle fortifications and to render useless arms and armament industries. Similarly, if an occupying power is forced to withdraw from occupied territory, it is free to protect its retreat by destroying bridges, highways and other property which would aid its pursuing the enemy. IIA Final Record 649, 651.

ARTICLE 54

Substance.

An occupying power may not punish public officials of the occupied territory for failure to carry on their functions "for reasons of conscience," except that such officers may be compelled to continue to perform official functions which are included in the categories of compulsory labor permitted under Article 51. The occupying power may remove public officials of the occupied territory from their posts.

Present text.

The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience.

This prohibition does not prejudice the application of the second paragraph of Article 51. It does not affect the right of the Occupying Power to remove public officials from their posts.

Prior texts.

None.

Background.

Article 45 of the Hague Regulations provides that "It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile power," and Article 52 of the Hague Regulations prohibits compelling such inhabitants to perform work which

will "involve the inhabitants in the obligation of taking part in military operations against their own country." The first paragraph of Article 54 of the Civilian Convention goes further by providing that public officials of the occupied territory, such as judges, who are unwilling for reasons of conscience to cooperate in any way with the occupying power, shall not be coerced or discriminated against if they refuse to perform their official duties. However, in such event, the occupying power may remove them from their posts and designate other persons to perform the functions involved.

The first sentence of the second paragraph of Article 54 contains an important exception to the rule of the first paragraph; this is that public officials of the occupied territory whose official functions fall within one of the categories of compulsory labor authorized by Article 51 may be required to continue to perform such functions. For example, public officials engaged in the operation of publicly owned utility and transportation services and public health officials may be required to continue to carry on their official duties. IIA Final Record 652, 665, 829.

The second paragraph of Article 54 also recognizes the right of the occupying power to remove public officials of the occupied territory. See United States Rules of Land Warfare, paragraph 311.

ARTICLE 55

Substance and present text

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods.

The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.

Prior texts

Article 52 of the Hague Regulations of 1907 provides that

"Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, \* \* \*

\* \* \* \* \*

"Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible."



of food and medical supplies for the benefit of its recent foes! As used in paragraph one, "other articles" is intended to cover "other urgently required goods which may be essential to the life of the territory." IIA Final Record 829. Under Article 6, the obligations imposed by Article 55 endure for only one year after the general close of military operations.

It should also be noted that this "best efforts" obligation is conditioned upon the fact that "the resources of the occupied territory are inadequate." This means that the material and labor resources of the occupied territory must be fully utilized before the occupying power has any obligation to support it. It was in view of this obligation which Article 55 places upon an occupying power that Article 51 greatly broadened the categories of work which it can require of protected persons in occupied territory. Similarly, any surpluses in other commodities in the occupied territory may be used to purchase food and medical supplies before the occupying power becomes obligated to contribute from its resources to the support of occupied territory.

b. Requisitions.

The second paragraph of Article 55 provides as follows:

"The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods."

The quoted language generally reiterates the principle of Article 52 of the Hague Regulations that requisitions shall be made only for the needs of the army of occupation, but includes for this purpose civilian

personnel of the occupation administration. IIA Final Record 829-830. Thus, this provision, like Article 52 of the Hague Regulations, precludes the requisition of supplies in the occupied territory for export to the home territory of the occupying power or elsewhere. Compare Nazi Conspiracy and Aggression: Opinion and Judgment, pp. 69-70.

Such requisitions of food and medical supplies may be made "only if the requirements of the civilian population have been taken into account." This condition appears to be much the same as the command of Article 52 of the Hague Regulations that requisitions "shall be in proportion to the resources of the country," in that the purpose of both clauses is "to avoid reducing the population to starvation." United States Rules of Land Warfare, paragraph 338. Committee III of the Geneva Conference rejected an amendment which would have substituted the words "providing the needs of the civilian population are sufficiently covered," and stated in its report that "it was considered preferable to adhere to the general principles in the Hague Regulations rather than to invite violations of the Convention by laying down conditions which the circumstances of war might frequently prove to be impracticable." IIA Final Record 830.

The second paragraph of Article 55 further provides that "Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods." The words "other international Conventions" refer to the Hague Regulations, and particularly to the last paragraph of Article 52 of the Hague Regulations, supra. The reference to "fair value"

is new, "and is intended to insure that where and when, under the Hague Regulations, payment is made for requisitioned goods, the Occupying Power must see to it that the payment made represents the fair value of the goods." IIA Final Record 830.

c. General.

Committee III of the Geneva Conference also rejected an amendment which, by substituting for the word "requisition" in the second paragraph the words "draw upon by means of requisition or by any other means," would have precluded an occupying power from requisitioning or purchasing such supplies in occupied territory except for the needs of the occupying forces. It was urged that otherwise an occupying power could strip a territory by buying up supplies with occupation currency. IIA Final Record 746. The amendment was rejected after the United States Delegation pointed out that under it

"\* \* \* an Occupying Power would be prevented from transferring food from an occupied territory where there was a surplus of agricultural products to another occupied territory where the population was starving. The result would be that trade, which is normally in the hands of Governments in time of war, would be stopped, and the agricultural country would be unable to receive manufactured goods in exchange for its surplus foodstuffs. The populations of both of the occupied territories concerned, would thus suffer."

See also IIA Final Record 830.

Generally, it should be noted that the Hague Regulations contain various provisions as to property in occupied territory which have no counterpart in the Civilian Convention and which, therefore, remain in effect in a conflict in which all of the participants are parties to the Hague Convention. See Article 154 of the Civilian Convention.

The report of Committee III of the Geneva Conference explains  
that

"The last paragraph of Article 49 provides, as did the Stockholm text, that the Protecting Powers shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, with the reservation that temporary restrictions may be imposed where they are necessitated by imperative military requirements. The Committee realized that during a war there may well be occasions when the admittance of the Protecting Power to certain areas in the territory may involve the disclosure of vital military information, such as, for example, preparations toward launching or repelling an invasion." IIA Final Record 830.



ARTICLE 56

GC-Art. 56-3/15/55

Substance

Defines the obligations of the occupying power in maintaining medical, hospital and health services in occupied territory.

Present text

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.

If new hospitals are set up in occupied territory and if the competent organs of the occupied State are not operating there, the occupying authorities shall, if necessary, grant them the recognition provided for in Article 18. In similar circumstances, the occupying authorities shall also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 20 and 21.

In adopting measures of health and hygiene and in their implementation, the Occupying Power shall take into consideration the moral and ethical susceptibilities of the population of the occupied territory.

Prior texts

None.

Background

Under the first paragraph of Article 56, the primary obligation of an occupying power is to facilitate and encourage public and private agencies of the occupied territory in maintaining its medical, hospital and health services, particularly in controlling contagious diseases. To a great extent, it is in the selfish interest of an occupying army to maintain at least minimum standards of health in occupied territory. However, it would be unreasonable to require or expect an occupying power to establish in a backward occupied territory standards of medical care and public health such as such territory had never before enjoyed.

The provision that "Medical personnel of all categories shall be allowed to carry out their duties," is subject, of course, to the security measures of the occupying power if any of such persons engage or are suspected of engaging in acts harmful to it.

Paragraph two of Article 56 provides that when new hospitals are established in occupied territory, the occupying power shall, if necessary, perform the functions of the State in extending recognition to such hospitals, their personnel and transport vehicles in accordance with Articles 18, 20 and 21.

ARTICLE 57

Substance

Prescribes the conditions under which the occupying power may requisition civilian hospitals and their supplies.

Present text

The Occupying Power may requisition civilian hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick, and then on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation.

The material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population.

Prior texts

None.

Background

Article 57 tries to strike a reasonable balance between the hospital needs of the population of the occupied territory and the sometimes urgent need of an occupying power for hospital care for its own sick and wounded. Thus, an occupying power may requisition civilian hospitals only upon two conditions. First, it may do so only in cases of urgent necessity for the care of its military wounded and sick. Secondly, it may do so only on condition "that suitable arrangements are made in due time for the

care and treatment of the patients and for the needs of the civilian population for hospital accommodation." It should be noted that in the corresponding Article 17 of the Stockholm draft this latter condition was phrased as "having previously ensured the care of the sick and wounded accommodated therein" (emphasis supplied). The change in language made at the Geneva Conference was made for the purpose of giving the occupying power a reasonable time within which to provide for civilian hospital patients displaced in favor of its own sick and wounded. The change recognizes that it would be unrealistic to expect that occupation troop commanders will refrain from providing the best available care for their seriously sick and wounded. It also recognizes that the local population enjoy possibilities of home nursing not available to occupation troops.

The second paragraph of Article 57 provides that "The material and stores of civilian hospitals cannot be requisitioned as long as they are necessary for the needs of the civilian population." This means, on the one hand, that the local inhabitants are not to be stripped of essential hospital supplies. On the other hand, for example, an occupying force which has run out of anesthetics may requisition some from a civilian hospital which has a year's supply. IIB Final Record 419-421.



ARTICLE 58

Substance and present text.

The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities.

The Occupying Power shall also accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory.

Prior text.

Article 46 of the Hague Regulations of 1907 provides that in occupied territory "religious convictions and practice, must be respected."

## ARTICLE 59

Substance.

If the population of an occupied territory is inadequately supplied, the occupying power shall permit and facilitate relief shipments from outside the occupied territory, and other governments which are parties to the Civilian Convention shall permit the passage of such shipments under certain conditions.

Present text.

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.

Prior texts.

None.

Background.

Where an occupied territory is inadequately supplied, the first two paragraphs impose upon the occupying power an obligation to permit and facilitate relief schemes undertaken by governments or organizations such as the International Committee of the Red Cross to provide, in particular, food, medical supplies and clothing for the population of the occupied territory.

The third paragraph provides that "All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection." By "free passage" is meant freedom from interference rather than free transportation costs. At the Geneva Conference, the United States and other delegations pointed out that it was unrealistic to impose upon countries at war with an occupying power an unqualified obligation to permit shipments of supplies into territory under its control and which, therefore, it might divert to its own benefit. Accordingly there was added the present fourth paragraph of Article 59 which provides that a government granting free passage to such relief consignments to occupied territory shall have the right (1) to search them, (2) to control the time and route of such consignments, and (3) "to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power".

During World War II, the United States and Great Britain permitted the passage of such relief shipments into German-occupied Greece.

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ARTICLE 60

Substance and present text.

Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56 and 59. The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power.

Prior texts.

None.

Background.

The purpose of the exception in the second sentence of Article 60 is "to make it possible for the Occupying Power to direct consignments of relief supplies in a given direction in the case of special circumstances (such as epidemics, difficulties of transport, etc.)." IIA Final Record 750.



ARTICLE 61

Substance and present text.

The distribution of the relief consignments referred to in the foregoing Articles shall be carried out with the cooperation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body.

Such consignments shall be exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory. The Occupying Power shall facilitate the rapid distribution of these consignments.

All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories.

Prior texts.

None.

Background.

The distribution of the relief consignments contemplated by Article 59 "shall be carried out with the cooperation and under the supervision of the Protecting Power", except that, by agreement between the occupying and Protecting powers, this duty may be delegated to a neutral power, the International Committee of the Red Cross, or any other impartial humanitarian body. The exception clause is explained in the report of Committee III of the Geneva Conference (IIA Final Record 832) as follows:

The Committee have, however, envisaged two situations

in which it might be desirable for the supervision of relief supplies to be undertaken by a body other than the Protecting Power. The first is when the Protecting Power ceases to function and a substitute is appointed. \* \* \* The second situation would arise if the Protecting Power wished because of the pressure of other duties, or for some other reason, to delegate its duties, in this respect to another body. Provision for this possibility has been made by providing that the duties may be delegated to a neutral Power, to the International Committee of the Red Cross, or any other impartial humanitarian body. Since it is essential that such a body shall carry out these duties efficiently and without bias, the agreement of both the Occupying Power and the Protecting Power to the delegation of duties has been prescribed.

The second paragraph permits the imposition upon relief shipments of the charges, taxes or customs duties of the occupied territory for the following reason, as stated in Plenary Meeting of the Geneva Conference (IIB Final Record 422):

\* \* \* The reason for that provision is that these supplies are not merely gifts. Frequently relief supplies are a very long-term arrangement, and the country which receives the supplies is bound ultimately to account for them. It will be known to delegates at this Conference that many countries rely upon customs and excise duties for a very large proportion of their revenue. If they are receiving large supplies for which they are expected to pay ultimately, and if they are deprived of the right to collect the ordinary revenue upon those supplies which will be sold to members of their own population, then they may, through a seemingly humanitarian provision, be implicated in insolvency. \* \* \*

Of course where relief supplies are gifts no country will wish to impose duties, because that would merely be a deterrent to the sending of more supplies; but it was felt by the people who studied this question carefully and exhaustively that they must have the right just mentioned.

The third paragraph provides that "All contracting parties shall endeavor to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories." It avoids imposing a rigid obligation of free transport which "might well impose an unfair burden on a small neutral country through which large supplies were passing and might even prejudice, for financial reasons, the passage of such supplies." IIA Final Record 832.

ARTICLE 62

Substance and present text.

Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.

Prior texts.

None.

ARTICLE 63

Substance

Subject to its security measures, an occupying power shall permit National Red Cross Societies, other relief societies, and certain non-military civil defense organizations to continue their humanitarian activities.

Present text.

Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power:

- (a) recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions;
- (b) the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.

The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues.

Prior texts.

None.



Background.

Under the first paragraph of Article 63, an occupying power may only temporarily and for urgent reasons of security restrict the humanitarian activities of recognized National Red Cross Societies or other relief societies or change the structure or personnel of such organizations.

Under the second paragraph, the same principles of non-interference are made applicable "to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues." This paragraph was sponsored by several west European countries which have or expect to have extensive civil defense organizations devoted to assisting civilians to survive the hazards of modern warfare. While the nature of such organizations is not defined precisely, it will be noted that the requirement of a "non-military character" absolutely precludes such organizations from playing any part in resistance to an invading army or to occupying power. If such an organization is used as a cover for activities hostile to an occupying power, the latter is free to disband it or modify its organization, personnel or activities.

## ARTICLE 64

### Substance

Subject to practical considerations of security and justice, the occupying power shall continue in effect the penal laws and courts of the occupied territory. The occupying power may subject the local population to rules necessary to enable such power to comply with the Convention, to maintain orderly government, and to insure its security.

### Present text

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offenses covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfill its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

### Prior texts

Article 43 of the Hague Regulations of 1907 provides that

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

### Background

Article 64 generally requires that the criminal laws and courts of the occupied territory must be continued in effect for ordinary criminal offenses committed by the local inhabitants and which do not involve the occupation forces. This principle is an amplification of Article 43 of the Hague Regulations and is consistent with American practice in Germany and Japan during World War II.

The first sentence of Article 64 restates the general and accepted principle that "The penal laws of the occupied territory shall remain in force", but qualifies it with two important exceptions. First, an

occupying



occupying power may suspend or repeal penal laws which constitute a threat to its security, as by requiring or encouraging resistance to its authority. Secondly, it may suspend or repeal penal laws which constitute "an obstacle to the application of the present Convention," a provision which reflects the suggestion of the United States that an occupying power should not be required to preserve laws and courts repugnant to the humanitarian principles of the Convention, such as Nazi elements in the German penal laws and courts following World War II. IIA Final Record 670, 833.

The second sentence of Article 64 provides that "the tribunals of the occupied territory shall continue to function in respect of all offenses covered by the said laws," but with two exceptions. First, the occupying power may suspend courts which would constitute an obstacle to the application of the Convention, e.g., which are corrupt or unfairly constituted. Secondly, where there is a "necessity for ensuring the effective administration of justice, i.e., in the event of a breakdown of the local administration of justice, as where the judges have fled, the occupying power may establish courts to enforce the local penal laws. IIA Final Record 833.

The second paragraph of Article 64 provides that occupying power may prescribe penal laws, applicable to the inhabitants of occupied territory, which are essential to enable it "to fulfill its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them."

The broad affirmative obligations of an occupying power under the Civilian Convention require that it be able to enforce with penal sanctions a wide variety of regulations (e.g., as to rationing and work) which it may find necessary to issue.

The obligation of an occupying power to "restore, and ensure, as far as possible, public order and safety", i.e., "to maintain the orderly government of the territory," will justify an occupying power in applying penal sanctions to violations ranging from looting to black marketing.

To insure the security of its forces and its lines of communication, an occupying power usually issues regulations dealing with such matters as espionage, sabotage, possession of weapons, travel, work, forbidden areas, etc. Under Article 64, such regulations may be enforced by penal sanctions.

## ARTICLE 65

### Substance and present text

The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive.

### Prior texts

None.

### Background

The report of Committee III of the Geneva Conference explains a change made in the Stockholm draft, as follows:

This Article has been amended to provide that the penal provisions enacted by the Occupying Power must be published as well as brought to the knowledge of the inhabitants, since under the Stockholm text it would have been legitimate for the Occupying Power to bring the provisions to the knowledge of the inhabitants verbally, by radio or loud-speaker announcements. It has also been provided that the provisions thus published shall not be retroactive. II A Final Record 833.



## ARTICLE 66

### Substance and present text

In case of a breach of the penal provisions promulgated by it by virtue of the second paragraph of Article 64, the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country.

### Prior texts

None.

### Background

The phrase "properly constituted, non-political military courts" presents the question of whether Article 66 permits an occupying power to establish tribunals especially organized and staffed to deal with the penal problems of occupied territory.

The confused history of Article 66<sup>1/</sup> indicates that the requirement that such courts be "non-political" and "military" was intended to prevent an Occupying Power from extending its domestic civil court system to the occupied territory. It also reflects a fear that "civil courts would be more likely to be political in character than military courts." IIA Final Record 833. A "properly constituted" military court can be defined only as a military court constituted in accordance with the law of the Occupying Power. Accordingly, it would seem that the United States, for example, would remain free to try inhabitants of occupied territory before military government courts, composed of either military or civilian judges, such as it employed in Germany. However, such courts must be a part of the military court system of the Occupying Power, and may not be a part of its domestic judicial system.

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<sup>1/</sup> Article 66 originated in Article 4 of Annex C of the draft of the Civilian Convention prepared by the Conference of Government Experts which met in Geneva in 1947. Report on the Work of the Conference of Government Experts for the Study of the Conventions for the Protection of War Victims (1947), p. 305. It may be traced as Article 57 of the draft proposed by the International Committee of the Red Cross to the International Red Cross Conference in Stockholm in 1948, and as Article 57 of the Stockholm draft. I Final Record 123. Its evolution at Geneva in 1949 appears in the report of Drafting Committee No. 2 of Committee III (CDG/CIV. 531, p.1, July 5, 1949), in the explanation of the rapporteur of Drafting Committee No. 2 (II Final Record, Sec. A, p. 765), and in the report of Committee III (*ibid.*, p. 833).

1/ cont'd

in Stockholm in 1948, and as Art. 57 of the Stockholm draft. I Final Record 123. Its evolution at Geneva in 1949 appears in the report of Drafting Committee No.2 of Committee III (CDG/CIV. 531, p.1, July 5, 1949), in the explanation of the rapporteur of Drafting Committee No.2 (II Final Record, Sec. A, p. 765), and in the report of Committee III (ibid., p.833).



# ARTICLE 67

## Substance and present text

The courts shall apply only those provisions of law which were applicable prior to the offense, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offense. They shall take into consideration the fact that the accused is not a national of the Occupying Power.

## Prior texts

None.

## ARTICLE 68

### Substance

Regulates the criminal penalties which an occupying power may impose upon protected persons in occupied territory for violation of its orders. At the Geneva Conference, the United States made a partial reservation with respect to the limitations which Article 64 places upon the imposition of the death penalty upon protected persons in occupied territory.

### Present text

Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed. Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. The courts provided for under Article 66 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.

The penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 may impose the death penalty on a protected person only in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have caused the



death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.

The death penalty may not be pronounced against a protected person unless the attention of the court has been particularly called to the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offence.

#### Prior texts

None.

#### Background

Article 68 deals with the important matter of the penalties which an occupying power may impose for violation of its security and other orders and for hostile acts committed by the local population.

It should be noted that nothing in Article 68 purports to preclude an occupying power from imposing penalties, such as fines, which do not involve the loss of liberty or life.

Imprisonment. The first sentence provides that "Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a

grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment \*\*\*." Although the history of Article 68 is silent in this respect, it does not prohibit an occupying power from imposing imprisonment as a penalty for offences other than those which are "solely intended to harm the occupying power." Thus, for example, an occupying power may sentence to imprisonment persons who violate its travel or foreign exchange regulation. An offense "which is solely intended to harm the occupied power," but which is not "an attempt on the life," etc., may be punished by deprivation of liberty only in the form of internment or "simple imprisonment." Although the term "simple imprisonment" is nowhere defined, it would not permit imprisonment with hard labor or solitary confinement. However, an offense which is solely intended to harm the occupying power and which also (1) constitutes "an attempt on the life or limb of members of the occupying forces or administration, or (2) a grave collective danger, or (3) seriously damages "the property of the occupying forces or administration or the installations used by them," may be punished by the occupying power with a more rigorous form of imprisonment, such as imprisonment at hard labor. While the term "grave collective danger" is not defined, it obviously includes collective or group action by protected persons against the security of the occupying power.

The death penalty. The second paragraph of Article 68 provides that an occupying power may impose the death penalty on a protected person only in cases where such person is guilty of (1) espionage, (2) "serious acts of sabotage against the military installations of the Occupying Power," or (3) "intentional offences which have caused the death of one or more persons," and then only if "such offences were punishable by death under the law of the occupied territory in force before the occupation began."

These limitations upon the use of the death penalty were brought about by those countries with recent experience under military occupations in which the death penalty was imposed on a large scale, and by countries which had abolished the death penalty in their domestic penal systems. Other governments, including the United States and the United Kingdom, had great misgivings over this strict limitation on the power of an occupying power to protect itself against illegal combatant activities. They pointed to the fact that collective penalties and reprisals had been prohibited under Article 33, while under Article 77 protected persons imprisoned by an occupying power must be turned over to the local authorities at the close of the occupation. However, in view of the record of past abuses, these governments, including the United States, were willing to bind themselves not to impose the death penalty on protected persons in occupied territory for violation of occupation penal regulations except for specified types of serious offenses. However, these same governments were unwilling to accept the further limitation that even this limited category of offenses should be punishable by death only if they were so punishable under the law of the occupied territory "in force before the occupation began."

This meant that a government foreseeing that its territory might be occupied need only abolish the death penalty in its own law to preclude its use by an occupying power. The prolonged discussion of this issue at the Geneva Conference appears at IIA Final Record 673-674, 765-768, 788-790; IIB Final Record 424-431; III Final Record 140-141.

Accordingly, the United States signed the Civilian Convention with a reservation to Article 68 which reserves the right of the United States to impose the death penalty for the offenses specified in Article 68, without regard to whether such offenses were punishable by death under the law of the occupied territory at the beginning of the occupation. The text of the United States' reservation to Article 68 is as follows:

"The United States reserves the right to impose the death penalty in accordance with the provisions of Article 68, paragraph 2, without regard to whether the offenses referred to therein are punishable by death under the law of the occupied territory at the time the occupation begins."

A similar reservation was made at the time of signing by the United Kingdom, Canada, the Netherlands and New Zealand.

It should be noted that paragraph two only restricts the use of the death penalty for violation of the penal regulations promulgated by the occupying power in accordance with Articles 64 and 65. It in no way restricts the use of the death penalty to punish protected persons for violations of the laws and customs of war.

Paragraph three provides that a death sentence may not be pronounced against a protected person unless it is pointed out to the court that the accused "is not bound to (the occupying power) by any duty of allegiance."

Paragraph 4 provides that "In any case, the death penalty may not be pronounced against a protected person who was under 18 years of age at the time of the offence." The danger that a resistance movement would employ 17 year olds to endanger the occupying power could be met by imposing the death penalty upon the adult organizers of such activity.



ARTICLE 69

Substance and present text.

In all cases, the duration of the period during which a protected person accused of an offence is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment awarded.

Prior text.

None.

## ARTICLE 70

### Substance.

An occupying power may not arrest or prosecute protected persons because of acts committed or opinions expressed before the occupation, except for violations of the laws and customs of war. Nationals of the occupying power who prior to hostilities found refuge in the occupied country shall not be arrested, prosecuted or deported from the occupied country by the occupying power, except for offenses committed after the outbreak of hostilities or for extraditable offenses committed before hostilities.

### Present text.

Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory except for offences committed after the outbreak of hostilities or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.

### Prior texts.

None.

### Background.

Under the first paragraph of Article 70 an occupying power may not arrest, prosecute or convict protected persons for acts committed or opinions expressed before the occupation, except for

violations of the laws and customs of war. However, the local courts of the occupied territory may try and punish such protected persons for violations of the penal laws of the occupied country which were committed before the occupation.

The second paragraph of Article 70 is intended to provide certain protection for refugees who are nationals of the occupying power and who found refuge in the occupied country before hostilities. It reflects the Nazi roundup of German refugees found in Nazi-occupied territories. However, paragraph two was carefully drafted to permit an occupying power to arrest, try, or remove its own nationals who have violated its laws while in the occupied country after the outbreak of hostilities, as by the Lord Haw Haw type of treason, or who before hostilities committed common crimes which would be extraditable under the law of the occupied country in peacetime. These exceptions are discussed at IIB Final Record 480.

## ARTICLE 71

### Substance.

Article 71, together with Articles 72-75, prescribe the minimum procedural rights of protected persons who are tried by the courts of the occupying power. Article 71 requires a regular trial before a protected person is sentenced, and provides for notice of charges and proceedings to the accused and to the Protecting Power.

### Present text.

No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and shall be brought to trial as rapidly as possible. The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it shall be enabled, at any time, to obtain information regarding the state of such proceedings. Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons.

The notification to the Protecting Power, as provided for in the second paragraph above, shall be sent immediately, and shall in any case reach the Protecting Power three weeks before the date of the first hearing. Unless, at the opening of the trial, evidence is submitted that the provisions of this Article are fully complied with, the trial shall not proceed. The notification shall include the following particulars:



- (a) description of the accused;
- (b) place of residence or detention;
- (c) specification of the charge or charges (with mention of the  
penal provisions under which it is brought);
- (d) designation of the court which will hear the case;
- (e) place and date of the first hearing.

Prior texts.

None.

Background.

The provisions of Article 71 (and of Articles 72-75) generally correspond to many of the provisions of Articles 104-107 of the Prisoner of War Convention.

As to the effect, under the third paragraph, of the absence of a Protecting Power, see discussion under Article 104 of the Prisoner of War Convention.

## ARTICLE 72

### Substance.

Defines the trial rights of a protected person tried by an occupying power.

### Present text.

Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.

Failing a choice by the accused, the Protecting Power may provide him with an advocate or counsel. When an accused person has to meet a serious charge and the Protecting Power is not functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel.

Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have the right at any time to object to the interpreter and to ask for his replacement.

### Prior texts.

None.

## ARTICLE 73

### Substance.

Each convicted person shall be informed of any appellate procedure provided by the occupying power and, in the absence of an appellate procedure, he shall be permitted to petition or object to the decision to a competent authority of the occupying power.

### Present text.

A convicted person shall have the right of appeal provided for by the laws applied by the court. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

The penal procedure provided in the present Section shall apply, as far as it is applicable, to appeals. Where the laws applied by the Court make no provision for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power.

### Prior texts.

None.

#### ARTICLE 74

##### Substance.

Representatives of the Protecting Power shall be permitted to attend the trial of protected persons by the Occupying Power, "unless the hearing has, as an exceptional measure, to be held in camera in the interests of the security of the Occupying Power." Notice of the time and place of all such trials shall be given to the Protecting Power. Notice of judgments involving a death sentence or imprisonment for two years or more must be given to the Protecting Power, and, in such cases any time allowed for appeal shall not run until the notice of judgment has been received by the Protecting Power. In all other cases, representatives of the Protecting Power may inspect a record of judgments,

##### Present text.

Representatives of the Protecting Power shall have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held in camera in the interests of the security of the Occupying Power, which shall then notify the Protecting Power. A notification in respect of the date and place of trial shall be sent to the Protecting Power.

Any judgment involving a sentence of death, or imprisonment for two years or more, shall be communicated, with the relevant grounds, as rapidly as possible to the Protecting Power. The notification shall contain a reference to the notification made under Article 71, and, in the case of sentences of imprisonment, the name of the place where the sentence is to be served. A record of judgments other than those referred to above shall be kept by the court and shall be open to inspection by representatives of the



Protecting Power. Any period allowed for appeal in the case of sentences involving the death penalty, or imprisonment of two years or more, shall not run until notification of judgment has been received by the Protecting Power.

Prior texts

None

Background

It will be noted that Article 71 requires that the Protecting Power receive a detailed three-weeks notice of the trial of a protected person on charges punishable by death or imprisonment for more than two years. Under the first paragraph of Article 74, the Protecting Power must be sent a notice of the time and place of all trials of protected persons.

In the event there is no Protecting Power or substitute therefor, trial could nevertheless be held if the Detaining Power has exhausted all possible means of bringing notice to the Power upon which the accused person depends or, if notice has reached that Power, after waiting a reasonable period following its receipt if no acknowledgement of receipt is forthcoming.

## ARTICLE 75

### Substance and present text

In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of at least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

### Prior texts

None.

## ARTICLE 76

### Substance

Prescribes the minimum conditions under which protected persons sentenced to imprisonment by the occupying power shall serve their sentences.

### Present text

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health.

They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Such persons shall have the right to receive at least one relief parcel monthly.

### Prior texts.

None.

Background.

Article 76 generally corresponds to Article 108 of the Prisoner of War Convention but does not give a right of correspondence.



ARTICLE 77

Substance and present text

Protected persons who have been accused of offences or convicted by the courts in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory.

Prior texts

None.

Background

At the close of the United States occupation of Japan, we did not bring to this country any Japanese who had been sentenced to imprisonment by our tribunals. Those persons serving terms of imprisonment for war crimes were turned over to Japanese custody pursuant to Article 11 of the Japanese Peace Treaty, which provided that Japan would carry out the sentences and that clemency, reduction of sentence, or parole would be granted only with the concurrence of the Government or Governments which imposed a particular sentence. For the arrangements made in the United States to consider recommendations of the Japanese Government for clemency, etc., see Executive Order No. 10393 of September 4, 1952, 17 F.R. 8061, establishing the Clemency and Parole Board for War Criminals.

## ARTICLE 78

### Substance

Assigned residence or internment is the most severe preventive security measure which may be applied to protected persons by an occupying power. By analogy to Article 43, the occupying power must provide a procedure for the reconsideration or review of the cases of protected persons who have been interned or placed in assigned residence, and such decisions must, if possible, be subject to review every six months. Where necessary, the occupying power must support protected persons (and their dependents) who are subjected to assigned residence away from their homes.

### Present text

If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power.

Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention.

Prior texts.

None.

Background

Article 78 does not require an occupying power to go through elaborate procedures of consideration and appeal before it may subject protected persons in occupied territory to internment or assigned residence. Rather, an occupying power may take such action immediately for security reasons. However, it must provide a procedure for reviewing such cases to insure against oppressive or mistaken action, and this procedure must include a right of appeal from adverse decisions to some authority of the occupying authority. Also, adverse decisions shall be subject to periodic review, if possible, every six months.

These provisions for review of internment and assigned residence decisions in occupied territory were made more flexible than the provisions of Article 43 (governing review of such decisions with respect to alien enemies in the home territory of a belligerent) in view of the varying conditions in occupied territory. IIB Final Record 440.





## REGULATIONS FOR THE TREATMENT OF INTERNEES

Section IV of Part III of the Civilian Convention, comprising Articles 79-135, both inclusive, consists of detailed regulations governing the treatment of civilian internees both in the home territory of a belligerent state and in occupied territory. The mistreatment of civilian internees by some of the belligerents in World War II dramatized the necessity for providing for such war victims protection akin to that afforded to prisoners of war. Since no prior convention regulated the treatment of civilian internees, humane detaining powers could apply only generally the analogies of the Prisoner of War Convention. In fact, the United States and other belligerents agreed to apply to civilian enemy aliens taken into custody the provisions of the 1929 Prisoner of War Convention so far as its provisions might be adaptable to civilians. 6 Dept. of State Bulletin 446. The United States Field Manual 27-10, Rules of Land Warfare, par. 70, also provided, probably with respect to occupied territory, that "every person captured or interned by such captivity or internment, a prisoner of war, and is entitled to be recognized and treated as such under the laws of war."

However, the status and problems of civilian internees differ sufficiently from those of prisoners of war (e.g., in the presence of dependent women and children) as to warrant particularized treatment. Basically, the system of protection established for civilian internees is that developed for prisoners of war. That is, it consists of detailed rules to be applied by the detaining power "with the co-operation and under the scrutiny of the Protecting Powers" (Article 9). To a very large extent, these rules embody the standards of treatment applied by the United States to interned alien enemies during World War II. In World War II, the United States voluntarily permitted representatives of the Protecting Powers and of the International Committee of the Red Cross to visit our internment camps. It is believed that this system of protection will result in better treatment of American citizens interned by other countries in the event of war.

It should be noted that the security provisions of Article 5 are applicable to the treatment of internees. However, it should be noted that where a protected civilian in occupied territory is interned for security reasons, he continues to enjoy his rights under the Convention, except that he may be deprived of rights of communication.

It is also worth noting that these internment regulations, like the Civilian Convention as a whole, were not intended to create a system of judicially enforceable rights in favor of protected persons in this country or in occupied territory. That is, while ratification

of the Civilian Convention will have the effect of limiting considerably the practically unlimited powers of the President under the Alien Enemy Act with respect to interned alien enemies, it is not intended to abrogate the principle of Ludecke v. Watkins, 335 U. S. 160, that the courts will go no further than to ascertain whether the alien involved is an alien enemy. Nor is it intended to change the rule of Johnson v. Elsentraeger, 339 U. S. 763, that non-resident alien enemies have no access to our courts.

ARTICLE 79Substance

Article 79 merely reiterates that protected persons shall not be interned in the territory of the detaining power except in accordance with Articles 41-43, or in occupied territory except in accordance with Articles 68 and 78.

Present text

The Parties to the conflict shall not intern protected persons, except in accordance with the provisions of Articles 41, 42, 43, 68 and 78.

Prior texts

None.

ARTICLE 80Substance and Present text

Internees shall retain their full civil capacity and shall exercise such attendant rights as may be compatible with their status.

Prior texts

None.

Background

Article 80 generally corresponds to the third paragraph of Article 14 of the Prisoner of War Convention. It is intended to insure that the fact of internment shall not deprive protected persons of their civil capacity, such as to enter into a contract, to make a will, or own and transfer property, although it is clear that some of these aspects of normal civil capacity may be affected drastically by general legislation such as alien property laws.



ARTICLE 81Substance

Article 81 imposes upon the detaining power the cost of maintaining internees, and the obligation of providing internees "the medical attention required by their state of health." It specifically provides that the cost of maintaining internees shall not be deducted from allowances, salaries or credits due to them. The third paragraph of Article 81 reiterates the requirement of the second paragraph of Article 39 that a detaining power shall support the dependents of internees if such dependents are without adequate means of support or unable to earn a living.

Present text

Parties to the conflict who intern protected persons shall be bound to provide free of charge for their maintenance, and to grant them also the medical attention required by their state of health.

No deduction from the allowances, salaries or credits due to the internees shall be made for the repayment of these costs.

The Detaining Power shall provide for the support of those dependent on the internees, if such dependents are without adequate means of support or are unable to earn a living.

Prior texts

None.

Background

The obligation of a detaining power to support interned protected persons has a counterpart in Article 15 of the Prisoner of War Convention. American experience in World War II showed the necessity of making detaining powers responsible for the support of internees' dependents who are unable to maintain themselves.

ARTICLE 82Substance

Article 82 provides that as far as possible a detaining power shall accommodate internees according to their nationality, language and customs, and that internees who are nationals of the same country shall not be separated merely because they have different languages. The second and third paragraphs of Article 82 would preserve and continue the family life of internees in three ways: (1) members of the same family, particularly parents and children, must be interned in the same place except where temporary separation becomes necessary for reasons of employment, health, or penal or disciplinary action; (2) internees may request that their children who are left at liberty without parental care shall be interned with them; (3) wherever possible, interned members of the same family shall be housed together and separated from other internees "together with other facilities for leading a proper family life."

Present text

The Detaining Power shall, as far as possible, accommodate the internees according to their nationality, language and customs. Internees who are nationals of the same country shall not be separated merely because they have different languages.

Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health or for the purposes of enforcement of the provisions of Chapter IX of the present Section. Internees may request that their children who are left at liberty without parental care shall be interned with them.

Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.

Prior texts

None.

BackgroundA. Non-Separation

The first paragraph of Article 82 generally corresponds to the third paragraph of Article 22 of the Prisoner of War Convention.



It was brought out at the Geneva Conference that it might not be practical for a detaining power to accommodate in a single place all of the internees of a particular nationality. Conceivably, there could be too many internees of a given nationality to permit their adequate treatment and secure detention in a single place of internment. Again, it may be necessary to separate internees because of bitter political differences between them, or to provide special accommodations for family groups, or to isolate those with contagious diseases or requiring special medical care. The phrase "as far as possible" in the first sentence of Article 82 was intended to allow for these practical problems. II B Final Record 441-443.

The second sentence of Article 82 provides that "Internees who are nationals of the same country shall not be separated merely because they have different languages." This reflects the fact that in many countries several languages are in use. It may also reflect the thought that in some countries there are minority groups with distinctive languages, and that internees who are members of such minorities should not be interned separately from members of the dominant group in their country. However, it is clear that the detaining power may, if there is bad feeling between such groups, accommodate them separately so as to eliminate the possibility of disorder.

#### B. Family Groups

The second and third paragraphs of Article 82 are designed to preserve and protect family groups in internment. During World War II, the United States established an internment camp at Crystal City, Texas, with special facilities for interned family groups. It should be noted that this provision for keeping family groups intact is subject to the security provisions of Article 5, with the result that for reasons relating to the security of the detaining power an internee may be accommodated separately from his family.

The second paragraph of Article 82 provides that "Internees may request that their children who are left at liberty without parental care shall be interned with them. It should be noted that the detaining power is not required to grant such request. The nature and purpose of the provision is described as follows in the report of Committee III of the Geneva Conference (II A Final Record 836):

\* \* \* The addition of the words "and without parental care" would mean, for example, that if only one parent were interned, that parent would not have any right under the Convention to request the internment of a child in the care of the other. On the other hand, if both parents, or the only surviving parent, were interned, that right would exist. It had been

suggested that internment of a child at the request of a parent might be limited to children under 16, but the general feeling was that this was unnecessary, since there was no strict obligation to act on the parents' request, but merely a moral obligation to consider all the circumstances, which would include amongst other things the age of the child.



ARTICLE 83Substance

Article 83 provides that internment camps shall not be set up in places particularly exposed to the dangers of war, that the detaining power shall notify enemy powers of the geographical location of places of internment, and that "whenever military considerations permit" internment camps shall be marked by the letters IC clearly visible in daytime from the air. However, the powers concerned may agree upon any other system of marking. No place other than an internment camp may be marked as such.

Present texts

The Detaining Power shall not set up places of internment in areas particularly exposed to the dangers of war.

The Detaining Power shall give the enemy Powers, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of places of internment.

Whenever military considerations permit, internment camps shall be indicated by the letters IC, placed so as to be clearly visible in the daytime from the air. The Powers concerned may, however, agree upon any other system of marking. No place other than an internment camp shall be marked as such.

Prior texts

None.

BackgroundA. Places of internment

The first paragraph of Article 83 means that places of internment should not be established adjacent to a military air field or any similar facility or area which might reasonably be expected to be an object of attack.

B. Marking

The second and third paragraphs of Article 83 correspond to the third and fourth paragraphs of Article 23 of the Prisoner of War Convention. It should be noted that while the detaining power must inform enemy powers of the location of "places of internment," the marking provisions of paragraph three apply only to "internment camps."

This variation is deliberate, "it being regarded as unreasonable to require the marking, for example, of places where internees are kept merely in temporary custody pending transfer to a place of permanent internment, or the marking of hospitals or institutions simply because internees are being treated there." Report of Committee III of the Geneva Conference (IIA Final Record 836).

The requirement for marking internment camps is subject to the limitation "Whenever military considerations permit" (which also appears in the corresponding Article 23 of the Prisoner of War Convention). This reflects the fact that if the internment camp is identified by the letters IC or otherwise so as to be clearly identifiable from the air, after the detaining power has notified an enemy power of the location of an internment camp, the camp may serve as a navigating guide or point for hostile aircraft. The clause "whenever military consideration permit" was added for the express purpose of enabling belligerent countries, particularly those of small area, to prevent such use of internment camp markings. IIB Final Record 444.

It should also be noted that under Article 83 "No place other than an internment camp may be marked as such." This means that no other buildings or areas may be marked IC, or in any other way which has been agreed upon by the powers concerned as a system of marking internment camps. As a practical matter, this means that no buildings or area other than internment camps may display the letters IC in such a way (e.g., as on a roof) as to be visible from the air. While this restriction on the use of the specific markings probably is a self-executing provision of the Civilian Convention, it would be desirable to reinforce it by legislation providing penal sanctions, as by an amendment to 18 U.S. Code 706 (which restricts the use of the Red Cross emblem).

ARTICLE 84Substance and present text

Internees shall be accommodated and administered separately from prisoners of war and from persons deprived of liberty for any other reason.

Prior texts

None.

Background

The corresponding Article 74 of the Stockholm draft provided that "Places of internment for protected persons shall be distinct from place of internment for prisoners of war, and from places where persons deprived of liberty for any other reason are confined" (emphasis supplied). This language would have forbidden even the temporary detention of internees in an ordinary prison or jail. The provision was changed to its present form so as to take into account the fact that immediately following the outbreak of hostilities a detaining power may find it necessary to accommodate internees in an existing prison while internment facilities are being prepared. Even under such circumstances, however, the detaining power is required to "keep internees out of contact with ordinary criminals and to provide for them separately in matters of administration." IIA Final Record 836-837. This is in accordance with American practice in World War II.

ARTICLE 85Substance

Requires the detaining power to provide internees with housing and sanitary facilities meeting specified standards.

Present text

The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas, or in districts the climate of which is injurious to the internees. In all cases where the district, in which a protected person is temporarily interned, is in an unhealthy area or has a climate which is harmful to his health, he shall be removed to a more suitable place of internment as rapidly as circumstances permit.

The premises shall be fully protected from dampness, adequately heated and lighted, in particular between dusk and lights out. The sleeping quarters shall be sufficiently spacious and well ventilated, and the internees shall have suitable bedding and sufficient blankets, account being taken of the climate, and the age, sex, and state of health of the internees.

Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning.

Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory.

Prior texts

None.



Background

Article 85 generally corresponds to Articles 22 and 25 of the Prisoner of War Convention. These important requirements as to housing and sanitation reflect American practice in World War II.

ARTICLE 86Substance and present text

The Detaining Power shall place at the disposal of interned persons, of whatever denomination, premises suitable for the holding of their religious services.

Prior texts

None.

Background

Article 86 generally corresponds to the second paragraph of Article 34 of the Prisoner of War Convention.

## ARTICLE 87

Substance

Detaining power must establish a canteen in each place of internment and devote canteen profits to the welfare of the internees.

Present text

Canteens shall be installed in every place of internment, except where other suitable facilities are available. Their purpose shall be to enable internees to make purchases, at prices not higher than local market prices, of foodstuffs and articles of everyday use, including soap and tobacco, such as would increase their personal well-being and comfort.

Profits made by canteens shall be credited to a welfare fund to be set up for each place of internment, and administered for the benefit of the internees attached to such place of internment. The Internee Committee provided for in Article 102 shall have the right to check the management of the canteen and of the said fund.

When a place of internment is closed down, the balance of the welfare fund shall be transferred to the welfare fund of a place of internment for internees of the same nationality, or, if such a place does not exist, to a central welfare fund which shall be administered for the benefit of all internees remaining in the custody of the Detaining Power. In case of a general release, the said profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Prior texts

None.

Background

During World War II, the United States, following the analogy of Article 12 of the 1929 Prisoner of War Convention, established in its internment camps canteens operated in accordance with the requirements of Article 87.

ARTICLE 88Substance

Article 88 requires the detaining power to provide shelters in places of internment exposed to air raids and, generally, to apply to internees the same protective measures as are enjoyed by the local population (e.g., gas masks). The detaining power must take appropriate steps to minimize the danger of fire in places of internment.

Present text

In all places of internment exposed to air raids and other hazards of war, shelters adequate in number and structure to ensure the necessary protection shall be installed. In case of alarms, the internees shall be free to enter such shelters as quickly as possible, excepting those who remain for the protection of their quarters against the aforesaid hazards. Any protective measures taken in favor of the population shall also apply to them.

All due precautions must be taken in places of internment against the danger of fire.

Prior texts

None.

Background

Article 88 generally corresponds to the second paragraph of Article 23 of the Prisoner of War Convention. It is deliberately phrased so "as not to impose an obligation to install air-raid shelters, for example, on countries which do not consider themselves within range of hostile action." IIA Final Record 837.



ARTICLE 89Substance

Article 89 prescribes nutritional standards to be followed by a detaining power in caring for internees. The basic nutritional standard is that the food "shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies." Appropriate additions to or variations in rations are required for internees who work and expectant and nursing mothers and children under 15.

Present text

Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.

Internees shall also be given the means by which they can prepare for themselves any additional food in their possession.

Sufficient drinking water shall be supplied to internees. The use of tobacco shall be permitted.

Internees who work shall receive additional rations in proportion to the kind of labour which they perform.

Expectant and nursing mothers, and children under fifteen years of age, shall be given additional food, in proportion to their psychological needs.

Prior texts

None.

Background

The nutritional standards of Article 89 are important. During World War II, the United States and other belligerents undertook to treat civilian internees in accordance with the 1929 Prisoner of War Convention to the extent that it was adaptable to civilians. The nutrition standard in Article 11 of the 1929 Convention was that "The food ration of prisoners of war shall be equivalent in quantity and quality to that of the depot troops." World War II demonstrated that the health of Americans was gravely impaired when they were forced

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to subsist upon the rations of rear area Japanese troops. For example, American internees suffered sharp losses in weight and such nutritional diseases as beri beri. Accordingly, the so-called national standard has been abandoned in favor of a requirement of such food rations, as taking into account the customary diet of internees, will keep them "in a good state of health and prevent the development of nutritional diseases." In the event of a future conflict, this provision should be of great benefit to American nationals interned abroad. A similar change appears in Article 26 of the new Prisoner of War Convention.

ARTICLE 91Substance

Article 91 (together with Article 92) defines the standards of medical treatment which the detaining power must provide for civilian internees without charge.

Present text

Every place of internment shall have an adequate infirmary, under the direction of a qualified doctor, where internees may have the attention they require, as well as an appropriate diet. Isolation wards shall be set aside for cases of contagious or mental diseases.

Maternity cases and internees suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital case, must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population.

Internees shall, for preference, have the attention of medical personnel of their own nationality.

Internees may not be prevented from presenting themselves to the medical authorities for examination. The medical authorities of the Detaining Power shall, upon request, issue to every internee who has undergone treatment an official certificate showing the nature of his illness or injury, and the duration and nature of the treatment given. A duplicate of this certificate shall be forwarded to the Central Agency provided for in Article 140.

Treatment, including the provision of any apparatus necessary for the maintenance of internees in good health, particularly dentures and other artificial appliances and spectacles, shall be free of charge to the internee.

Prior texts

None.

Background

Article 91 generally corresponds to Article 30 of the Prisoner of War Convention. During World War II, the United States applied to civilian internees at least the standards of medical care prescribed by Articles 14 and 15 of the 1929 Prisoner of War Convention. Article 91 (and Article 92), like Articles 30 and 31 of the new Prisoner of War Convention, prescribe more detailed standards of medical treatment, such as requiring that the monthly medical inspections of internees include checking their weight and that they receive an annual radioscopic examination (to detect tuberculosis).

The requirement of the fourth paragraph of Article 91 for the issuance of certificates of illness or injury derives from Article 14 of the 1929 Prisoner of War Convention.

ARTICLE 92Substance

Article 92 requires monthly medical examinations of internees, and an annual radioscopic examination.

Present text

Medical inspections of internees shall be made at least once a month. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of internees, and to detect contagious diseases, especially tuberculosis, malaria, and venereal diseases. Such inspections shall include, in particular, the checking of weight of each internee and, at least once a year, radioscopic examination.

Prior texts

None.

Background

Article 92 generally corresponds to Article 31 of the Prisoner of War Convention. While these requirements for medical examinations embody a higher standard of preventive medical care than is enjoyed normally by the civilian population of the United States, they merely reflect the fact that internees are not in a position to be responsible for their own medical care. They also provide a good objective standard by which to measure the general treatment of internees.



ARTICLE 93Substance

Article 93 guarantees to internees freedom of religious worship, subject only to the disciplinary routine of the place of internment. Interned ministers shall be allowed to minister to their fellow internees and shall be allocated between the places of internment containing internees of the same religious faith or, if they are too few in number, transported to such places. Interned ministers may communicate with religious authorities of the detaining country and, as far as possible, with international religious organizations of their faith, but subject to the censorship provisions of Article 112. When there are too few interned ministers to maintain the religious observances of the internees, local religious authorities of the same faith may, in agreement with the detaining power, supply ministers or qualified laymen.

Present text

Internees shall enjoy complete latitude in the exercise of their religious duties, including attendance at the services of their faith, on condition that they comply with the disciplinary routine prescribed by the detaining authorities.

Ministers of religion who are interned shall be allowed to minister freely to the members of their community. For this purpose, the Detaining Power shall ensure their equitable allocation amongst the various places of internment in which there are internees speaking the same language and belonging to the same religion. Should such ministers be too few in number, the Detaining Power shall provide them with the necessary facilities, including means of transport, for moving from one place to another, and they shall be authorized to visit any internees who are in hospital. Ministers of religion shall be at liberty to correspond on matters concerning their ministry with the religious authorities in the country of detention and, as far as possible, with the international religious organizations of their faith. Such correspondence shall not be considered as forming a part of the quota mentioned in Article 107. It shall, however, be subject to the provisions of Article 112.

When internees do not have at their disposal the assistance of ministers of their faith, or should these latter be too few in number, the local religious authorities of the same faith may appoint, in agreement with the Detaining Power, a minister of the internees' faith or, if such a course is feasible from a denominational point of view, a minister of similar religion or a qualified layman. The latter shall enjoy the facilities granted to the ministry he has assumed. Persons so appointed shall comply with all regulations laid down by the Detaining Power in the interests of discipline and security.

Prior

Prior texts

None.

Background

Article 93 generally corresponds to Articles 34-37 of the Prisoner of War Convention.

Since it may be assumed that clergymen would be interned only for compelling security reasons, it should be noted that their right to travel from one place of internment to another is subject to the security provisions of Article 5.

ARTICLE 94Substance

Article 94 requires the detaining power to provide reasonable educational and recreational facilities for internees, particularly for children.

Present text

The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees, whilst leaving them free to take part in them or not. It shall take all practicable measures to ensure the exercise thereof, in particular by providing suitable premises.

All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside.

Internees shall be given opportunities for physical exercise, sports and outdoor games. For this purpose, sufficient open spaces shall be set aside in all places of internment. Special playgrounds shall be reserved for children and young people.

Prior texts

None.

Background

From the point of view of the detaining power, providing internees with reasonable facilities for education and recreation is not only humane, but also tends to maintain the morale, health and good conduct of internees. During World War II, the United States organized such facilities in its internment camps.

A detaining power could discharge its obligation to ensure the education of internees' children by permitting adult internees to provide schooling with facilities provided by the detaining power or, if such is not feasible, by directly providing appropriate instruction. It should be emphasized that under Article 94 internees may not be compelled to take courses of instruction, since in the past such compulsion has often been associated with propaganda and "brainwashing."



ARTICLE 95Substance

Article 95 sharply limits the work which civilian internees may be compelled to do, and prescribes in detail the working conditions under which they may perform voluntary work.

Present text

The Detaining Power shall not employ internees as workers, unless they so desire. Employment which, if undertaken under compulsion by a protected person not in internment, would involve a breach of Articles 40 or 51 of the present Convention, and employment on work which is of a degrading or humiliating character are in any case prohibited.

After a working period of six weeks, internees shall be free to give up work at any moment, subject to eight days' notice.

These provisions constitute no obstacle to the right of the Detaining Power to employ interned doctors, dentists and other medical personnel in their professional capacity on behalf of their fellow internees, or to employ internees for administrative and maintenance work in places of internment and to detail such persons for work in the kitchens or for other domestic tasks, or to require such persons to undertake duties connected with the protection of internees may, however, be required to perform tasks for which he is, in the opinion of a medical officer, physically unsuited.

The Detaining Power shall take entire responsibility for all working conditions, for medical attention, for the payment of wages, and for ensuring that all employed internees receive compensation for occupational accidents and disease. The standards prescribed for the said working conditions and for compensation shall be in accordance with the national laws and regulations, and with the existing practice; they shall in no case be inferior to those obtaining for work of the same nature in the same district. Wages for work done shall be determined on an equitable basis by special agreements between the internees, the Detaining Power, and, if the case arises, employers other than the Detaining Power, due regard being paid to the obligation of the Detaining Power to provide for free maintenance of internees and for the medical attention which their state of health may require. Internees permanently detailed for categories of work mentioned in the third paragraph of this Article, shall be paid fair wages by the Detaining Power.

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The working conditions and the scale of compensation for occupational accidents and diseases to internees thus detailed, shall not be inferior to those applicable to work of the same nature in the same district.

Prior texts.

None.

Background

a. Past practice of United States

The principle of the first paragraph of Article 95 that internees shall not be obliged to work (except in the operation and maintenance of places of internment) was followed by the United States with respect to alien enemies interned in this country in World War II. Indeed, the agreement between United States and Japan to treat each other's interned nationals in accordance with the 1929 Prisoner of War Convention expressly provided that civilian internees should not be compelled to work. 6 Department of State Bulletin (1942) 446.

b. Compulsory work by internees

Under the third paragraph of Article 95, internees may be compelled to perform work connected with the operation and maintenance of internment camps. In particular, interned doctors and dentists may be required to render professional services to their fellow internees. The detaining power is not required to pay internees for such work when performed on a sporadic or retaining basis; however, the detaining power must pay fair wages to internees permanently assigned to such work (e.g., kitchen or laundry) and must provide them with working conditions and a scale of compensation for occupational accidents and diseases not inferior to those applicable to work of the same nature in the same district.

c. Voluntary work by internees

Internees may voluntarily perform work in the categories of work which civilian protected persons who are not interned may be compelled to perform in the home territory of a belligerent power or in occupied territory under Articles 40 and 51, respectively. Under Article 40, a belligerent power may compel protected persons in its home territory to perform "work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings," and under Article 51, protected persons in occupied territory may be required to perform work in those categories and work necessary for the needs of the army of occupation and for the public utility services. Under both Articles 40 and 51, protected persons who

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are not internees may engage voluntarily in any kind of work. However, Article 95 provides that civilian internees may not even voluntarily engage in work of a type not specified in Article 40 or Article 51, depending upon whether the internees are in the territory of the detaining power or in occupied territory. As stated in the report of Committee III of the Geneva Conference, "The effect is to provide that whereas for persons not in internment it is only the compulsion to do certain kinds of work which is illegal, for internees the performance of that kind of work is in any case prohibited." IIA Final Record 838.

During World War II, interned alien enemies in this country were permitted to work for public and private employers, largely in agriculture and highway and forest maintenance.

Where internees perform work other than that involved in the operation and maintenance of places of internment, the detaining power remains responsible "for all working conditions, for medical attention, for the payment of wages, and for ensuring that all employed internees receive compensation for occupational accidents and diseases." The standards for such working conditions and compensation shall not be inferior to those obtaining for work of the same nature in the same district.

Wages for such work must be determined on an equitable basis by agreement between the internees, the detaining power, and the employer (if other than the detaining power). Such wage agreements may take into account the obligation of the detaining power to support the internees; that is, such agreements may provide that a portion of the wages earned by an internee may be retained by or paid over to the detaining power in reimbursement of its cost of supporting the internee. As stated in the report of Committee III of the Geneva Conference, "it is not intended that the internees shall be entitled to receive by way of wages the whole of the amount paid over by such an employer, since this might lead to fantastic results, the internee being, unlike the ordinary worker in the district, a person who has been divested of all normal financial responsibilities." IIA Final Record 839.

#### d. Workmen's compensation

The provision that the detaining power shall provide compensation for occupational accidents and diseases has its origin in Article 27 of the 1929 Prisoner of War Convention, although under Articles 54 and 68 of the 1949 Prisoner of War Convention prisoners of war must seek such compensation from their home governments. Different treatment for civilian internees is justified on the ground that they cannot rely upon the retirement and disability benefits usually available to military personnel.

It is not entirely clear whether the requirement of compensation for occupational accidents and diseases is absolute, without regard to whether the particular type of work is covered by workmen's compensation laws in the particular area. As a matter of policy, since internees cannot choose an occupation, although they may refuse to work altogether, it would probably be in the interest of a detaining power to encourage them to work by providing them with reasonable compensation for such accidents and diseases. During World War II, bills were introduced in Congress to extend the U.S. Employees Compensation Act to work performed for the United States by civilian internees, see, e.g., S.1698, 78th Congs., 2d Sess., but were not enacted.



## ARTICLE 96

Substance.

Labor detachments of internees must remain a part of and dependent upon the camp or other place of internment, and the detaining power and the commandant of the place of internment are responsible for compliance with the Convention in labor detachments.

Present Text.

All labour detachments shall remain part of an dependent upon a place of internment. The competent authorities of the Detaining Power and the commandant of a place of internment shall be responsible for the observance in a labour detachment of the provisions of the present Convention. The commandant shall keep an up-to-date list of the labour detachments subordinate to him and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross and of other humanitarian organizations who may visit the places of internment.

Prior Texts.

None.

Background.

It was demonstrated in World War II that grave abuses often result when a detaining power abdicates to private employers the responsibility for proper treatment of internee workers. Articles 95 and 96 meet this situation by placing upon the detaining power full responsibility for compliance with the Convention, no matter where or for whom the internees may be working.



## ARTICLES 97 and 98

Substance

Articles 97 and 98 deal with the disposition of the personal property of internees, internees' allowances and accounts, and their identity papers.

Present texts

Article 97 - Internees shall be permitted to retain articles of personal use. Monies, cheques, bonds, etc., and valuables in their possession may not be taken from them except in accordance with established procedure. Detailed receipts shall be given therefor.

The amounts shall be paid into the account of every internee as provided for in Article 98. Such amounts may not be converted into any other currency unless legislation in force in the territory in which the owner is interned so requires or the internee gives his consent.

Articles which have above all a personal or sentimental value may not be taken away.

A woman internee shall not be searched except by a woman.

On release or repatriation, internees shall be given all articles, monies or other valuables taken from them during internment and shall receive in currency the balance of any credit to their accounts kept in accordance with Article 98, with the exception of any articles or amounts withheld by the Detaining Power by virtue of its legislation in force. If the property of an internee is so withheld, the owner shall receive a detailed receipt.

Family or identity documents in the possession of internees may not be taken away without a receipt being given. At no time shall internees be left without identity documents. If they have none, they shall be issued with special documents drawn up by the detaining authorities, which will serve as their identity papers until the end of their internment.

Internees may keep on their persons a certain amount of money, in cash or in the shape of Purchase coupons, to enable them to make purchases.

Article 98 - All internees shall receive regular allowances, sufficient to enable them to purchase goods and articles, such as tobacco, toilet requisites, etc. Such allowances may take the form of credits or purchase coupons.

Furthermore, internees may receive allowances from the Power to which they owe allegiance, the Protecting Powers, the organizations which may assist them, or their families, as well as the income on their property in accordance with the law of the Detaining Power. The amount of allowances granted by the Power to which they owe allegiance shall be the same for each category of internees (infirm, sick, pregnant women, etc.), but may not be allocated by that Power or distributed by the Detaining Power on the basis of discriminations between internees which are prohibited by Article 27 of the present Convention.

The Detaining Power shall open a regular account for every internee, to which shall be credited the allowances named in the present Article, the wages earned and the remittance received, together with such sums taken from him as may be available under the legislation in force in the territory in which he is interned. Internees shall be granted all facilities consistent with the legislation in force in such territory to make remittances to their families and to other dependents. They may draw from their accounts the amounts necessary for their personal expenses, within the limits fixed by the Detaining Power. They shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts. A statement of accounts shall be furnished to the Protecting Power on request, and shall accompany the internee in case of transfer.

#### Prior texts

None.

#### Background

Articles 97 and 98 apply to civilian internees, with appropriate modifications, some of the principles of the Prisoner of War Convention dealing with the personal property and financial resources of detained persons.

The detaining power must give to internees regular allowances sufficient to enable them to purchase tobacco, toilet requisites, etc. Such allowances may be in the form of credits or purchase coupons. It should be noted that such allowances must be paid to all internees, rather than only to those without resources of their own. This is emphasized by the fact that the Geneva Conference in Plenary Session deleted a qualifying phrase, "without adequate means" which Committee III has added to the Stockholm draft. IIA Final Record 839; IIB Final Record 450-453. Also, internees may receive allowances from the power to which they owe allegiance, the Protecting Power, organizations which may assist them, or their families. The further provision that internees may receive "the income on their property in accordance with the law of the Detaining Power," refers to property in the territory of the detaining power (IIB Final Record 454), and recognizes that this principle would be subordinate to the general enemy property laws of the detaining power—such as the Trading with the Enemy Act (50 U. S. C. App. 1).

Article 98 also requires the detaining power to maintain for each internee an account to which shall be credited (1) the allowances and remittances referred to in Article 98, (2) wages earned by the internee, and (3) such of the funds taken from him as may be available under the legislation of the detaining power (e.g., Trading With the Enemy Act). It should be noted that currency taken from an internee may not be converted into any other currency unless the internee consents or such conversion is required by the law of the detaining power. Subject to such legislation, internees shall be granted facilities to send remittances to their dependents. Internees may draw on their accounts for their personal expenses "within the limits fixed by the Detaining Power". In determining the amounts which internees may draw from their accounts, the detaining power may take into account its own enemy property legislation, the internees' needs, the extent to which it is satisfying the needs of the internees, and the possible dangers of internees having substantial funds in their possession.

Internees shall be permitted to consult and obtain copies of their accounts; a statement of accounts shall be furnished to the Protecting Power at its request, and shall accompany an internee who is transferred.

Article 97 provides that upon release or repatriation internees shall be given all articles, monies or other valuables taken from them during internment and shall receive in currency the balance of any credit to their accounts kept in accordance with Article 98, with the exception of any articles or amounts withheld by the detaining power pursuant to its law. If the property of an internee is so withheld, the owner shall receive a detailed receipt. In brief, the return of property taken from internees and the settlement of their accounts is subject to the alien property legislation of the detaining power. Generally, under Articles 97 and 98 alien enemies who are interned remain subject to alien property legislation to the same extent as alien enemies who are not interned.



ARTICLE 99Substance

Each place of internment shall be supervised by a responsible military or civil officer, who must possess a copy of this Convention and who shall be responsible for applying it. His subordinates must be instructed as to the requirements of the Convention. The text of the Convention and of special agreements thereunder shall be posted inside each place of internment in a language the internees understand, or shall be in the possession of the Internee Committee contemplated by Article 102. Regulations, orders, commands, notices and publications applicable to internees collectively or individually shall be communicated to them in a language which they understand.

Present text

Every place of internment shall be put under the authority of a responsible officer, chosen from the regular military forces or the regular civil administration of the Detaining Power. The officer in charge of the place of internment must have in his possession a copy of the present Convention in the official language, or one of the official languages, of his country and shall be responsible for its application. The staff in control of internees shall be instructed in the provisions of the present Convention and of the administrative measures adopted to ensure its application.

The text of the present Convention and the texts of special agreements concluded under the said Convention shall be posted inside the place of internment, in a language which the internees understand, or shall be in the possession of the Internee Committee.

Regulations, orders, notices and publications of every kind shall be communicated to the internees and posted inside the places of internment, in a language which they understand.

Every order and command addressed to internees individually, must likewise, be given in a language which they understand.

Prior texts

None.

Background

Article 99 corresponds to Article 41 of the Prisoner of War Convention.

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The provision that a place of internment "shall be put under the authority of a responsible officer, chosen from the regular military forces or the regular civil Administration of the Detaining Power," insures that such officers will be fully responsible to, and under the full control of, the government of the detaining power. The operation of internment camps during World War II by the Immigration Service of the Department of Justice would have been in compliance with Article 99.

ARTICLE 100Substance

The system of discipline in places of internment shall be humane.

Present Text

The disciplinary regime in places of internment shall be consistent with humanitarian principles, and shall in no circumstances include regulations imposing on internees any physical exertion dangerous to their health or involving physical or moral victimization. Identification by tattooing or imprinting signs or markings on the body, is prohibited.

In particular, prolonged standing and roll-calls, punishment drill, military drill and manoeuvres, or the reduction of food rations, are prohibited.

Prior Texts

None.

Background

While brutality has no place in the disciplinary treatment of internees, it should be noted that under Article 117 to 126, both inclusive, internees may be subjected to penal and disciplinary sanctions if they commit ordinary crimes or violate internment regulations.

ARTICLE 101Substance

Internees shall be permitted to complain to authorities of the detaining power, and, either directly or through the Internee Committee, to representatives of the Protecting Power, and they may not be punished because of such complaints. The Internee Committee in a place of internment may make periodic reports to representatives of the Protecting Power on internment conditions and the needs of the internees.

Present text

Internees shall have the right to present to the authorities in whose power they are, any petition with regard to the conditions of internment to which they are subjected.

They shall also have the right to apply without restriction through the Internee Committee or, if they consider it necessary, direct to the representatives of the Protecting Power, in order to indicate to them any points on which they may have complaints to make with regard to the conditions of internment.

Such petitions and complaints shall be transmitted forthwith and without alteration, and even if the latter are recognized to be unfounded, they may not occasion any punishment.

Periodic reports on the situation in places of internment and as to the needs of the internees, may be sent by the Internee Committees to the representatives of the Protecting Powers.

Prior texts

None.

Background

Article 101 generally corresponds to Article 78 of the Prisoner of War Convention, dealing with prisoners' representatives.

It should be noted that the phrase "and without alteration" in the third paragraph of Article 101 was not intended to exempt such communications from censorship by the detaining power in accordance with Article 112. With reference to this problem, the report of Committee III of the Geneva Conference contains the following statement (IIA Final Record 840):

\*\*\* It was generally accepted that a duty to transmit requests and complaints necessarily implied a right to read the documents in question to see whether they were in fact requests and complaints. Moreover, since there was no obligation to transmit without alteration a matter which was not a complaint and not a request, there could be no breach of the Convention if such matter were deleted from communications to representatives, for example, of the Protecting Power.

ARTICLE 102Substance

In each place of internment, internees must be permitted to elect every six months a Committee empowered to represent them before the detaining and protective powers, the International Committee of the Red Cross, and any other organization which may assist them. While the detaining power may disapprove the selection of particular internees to serve on the Internee Committee, or may later dismiss them from the Committee, it must communicate to the Protecting Power its reasons for such action.

Present text

In every place of internment, the internees shall freely elect by secret ballot every six months, the members of a Committee empowered to represent them before the Detaining and the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. The members of the Committee shall be eligible for re-election.

Internees so elected shall enter upon their duties after their election has been approved by the detaining authorities. The reasons for any refusals or dismissals shall be communicated to the Protecting Powers concerned.

Prior texts

None.

Background

Article 102 generally corresponds to Article 79 of the Prisoner of War Convention.



ARTICLE 103

Substance

Internee Committees shall further the welfare of the internees.

Present Text

The Internee Committees shall further the physical, spiritual and intellectual well-being of the internees.

In case the internees decide, in particular, to organize a system of mutual assistance amongst themselves, this organization would be within the competence of the Committees in addition to the special duties entrusted to them under other provisions of the present Convention.

Prior texts

None.

Background

Article 103 generally corresponds to Article 80 of the Prisoner of War Convention.

ARTICLE 104Substance

Members of Internee Committees shall not be required to perform other work which will make more difficult the performance of their Committee duties, shall be permitted to appoint other internees to assist them, and shall be granted facilities, particularly a certain freedom of movement and opportunity for communications, appropriate to their duties.

Present text

Members of Internee Committees shall not be required to perform any other work, if the accomplishment of their duties is rendered more difficult thereby.

Members of Internee Committees may appoint from amongst the internees such assistants as they may require. All material facilities shall be granted to them, particularly a certain freedom of movement necessary for the accomplishment of their duties (visits to labour detachments, receipt of supplies, etc.).

All facilities shall likewise be accorded to members of Internee Committees for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, and with the organizations which give assistance to internees. Committee members in labour detachments shall enjoy similar facilities for communication with their Internee Committee in the principal place of internment. Such communications shall not be limited, nor considered as forming a part of the quota mentioned in Article 107.

Members of Internee Committees who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

Prior Texts

None.

Background

Article 104 generally corresponds to Article 81 of the Prisoner of War Convention.

ARTICLE 105Substance

Immediately upon interning protected persons, the detaining power shall notify them, the government to which they owe allegiance, and the Protecting Power of the measures taken by the detaining power (and of later modifications of such measure) for carrying out the provisions of Articles 105-116, both inclusive, governing internees' relations with the exterior (e.g., correspondence, visitors, individual and collective relief shipments).

Present text

Immediately upon interning protected persons, the Detaining Powers shall inform them, the Power to which they owe allegiance and their Protecting Power of the measures taken for executing the provisions of the present Chapter. The Detaining Powers shall likewise inform the Parties concerned of any subsequent modifications of such measures.

Prior texts

None.

Background

Article 105 generally corresponds to Article 69 of the Prisoner of War Convention.

ARTICLE 106Substance

A week after a protected person is interned or, if he is already interned, after he becomes ill or is transferred to another place of internment or to a hospital, he shall be permitted to send to his family and to the Central Information Bureau for protected persons contemplated by Article 140 a card stating the fact of his detention, address and state of health. Such cards shall be forwarded as rapidly as possible.

Present text

As soon as he is interned, or at the latest not more than one week after his arrival in a place of internment, and likewise in cases of sickness or transfer to another place of internment or to a hospital, every internee shall be enabled to send direct to his family, on the one hand, and to the Central Agency provided for by Article 140, on the other, an internment card similar, if possible, to the model annexed to the present Convention, informing his relatives of his detention, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any way.

Prior texts

None.

Background

Article 106 generally corresponds to Article 70 of the Prisoner of War Convention.



ARTICLE 107Substance

Defines the correspondence rights of internees.

Present text

Internees shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each internee, the said number shall not be less than two letters and four cards monthly; those shall be drawn up so as to conform as closely as possible to the models annexed to the present Convention. If limitations must be placed on the correspondence addressed to internees, they may be ordered only by the Power to which such internees owe allegiance, possibly at the request of the Detaining Power. Such letters and cards must be conveyed with reasonable despatch; they may not be delayed or retained for disciplinary reasons.

Internees who have been a long time without news, or who find it impossible to receive news from their relatives, or to give them news by the ordinary postal route, as well as those who are at a considerable distance from their homes, shall be allowed to send telegrams, the charges being paid by them in the currency at their disposal. They shall likewise benefit by this provision in cases which are recognized to be urgent.

As a rule, internees' mail shall be written in their own language. The Parties to the conflict may authorize correspondence in other languages.

Background

Article 107 generally corresponds to Article 71 of the Prisoner of War Convention. It should be noted that if, for example, practical problems of censorship require the detaining power to limit the number of letters and cards sent by each internee, each internee must be permitted to send not less than two cards and four letters each month. Limitations upon the correspondence addressed to internees may be imposed by the power to which they owe allegiance, but not by the detaining power. In appropriate cases, internees shall be allowed to send telegrams at their own expense to their families. Correspondence sent by or addressed to internees is subject to censorship under Article 112. Moreover, in security cases, such rights of communication may be suspended entirely in accordance with Article 5.

ARTICLE 108Substance

Internees must be permitted to receive individual and collective relief shipments.

Present text

Internees shall be allowed to receive, by post or by any other means, individual parcels or collective shipments containing in particular foodstuffs, clothing, medical supplies, as well as books and objects of a devotional, educational or recreational character which may meet their needs. Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

Should military necessity require the quantity of such shipments to be limited, due notice thereof shall be given to the Protecting Power and to the International Committee of the Red Cross, or to any other organization giving assistance to the internees and responsible for the forwarding of such shipments.

The conditions for the sending of individual parcels and collective shipments shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the internees of relief supplies. Parcels of clothing and foodstuffs may not include books. Medical relief supplies shall, as a rule, be sent in collective parcels.

Prior texts

None.

Background

Article 108 generally corresponds to Article 72 of the Prisoner of War Convention. Such relief shipments are subject to censorship examination by the detaining power in accordance with Article 112.

While the detaining power may, for reasons of military necessity such as a shortage of transport, limit the quantity of such shipments, it must give notice of such limitation to the Protecting Power and any organization sponsoring such shipments so that they may have an opportunity to make alternative arrangements. IIA Final Record 840.

# ARTICLES 109 (AND ANNEX II)

## Substance

Article 109 provides that in the absence of special agreements between belligerents governing the receipt and distribution of collective relief shipments, Annex II to the Convention, entitled Draft Regulations Concerning Collective Relief, will control. Under Annex II, the distribution of collective relief shipments is placed in the hands of the Internee Committees contemplated by Article 102. Such special agreements may not restrict the right of Internee Committees to take possession of and to distribute collective relief shipments, nor "the right of representatives of the Protecting Powers, the International Committee of the Red Cross, or any other organization giving assistance to internees and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients."

## Present text

In the absence of special agreements between Parties to the conflict regarding the conditions for the receipt and distribution of collective relief shipments, the regulations concerning collective relief which are annexed to the present Convention shall be applied.

The special agreements provided for above shall in no case restrict the right of Internee Committee to take possession of collective relief shipments intended for internees, to undertake their distribution and to dispose of them in the interests of the recipients.

Nor shall such agreements restrict the right of representatives of the Protecting Powers, the International Committee of the Red Cross, or any other organization giving assistance to internees and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

## Prior texts

None.

## Background

Article 109 generally corresponds to Article 73 of the Prisoner of War Convention. Collective relief shipments are often the only practical method by which a government can aid its nationals who are held as prisoners of war or civilian internees. The principle that the receipt and distribution of collective relief shipments should be controlled

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by the recipients was established in Article 43 of the 1929 Prisoner of War Convention, and is elaborated in the regulations of Annex II of the Civilian Convention. Recent events have suggested that control over the distribution of collective relief shipments, whether by an Internee Committee or in accordance with instructions from the donor, might be used as a political weapon among internees. However, it should be noted that under Article 102 the detaining power may reject or dismiss members of an Internee Committee. Also, the humanitarian purposes of the Convention would warrant a detaining power in insisting that collective relief shipments be distributed among civilian internees upon an equitable basis. See Article 2 of Annex II.



## ARTICLE 110

### Substance

Article 110 generally provides that all relief shipments for internees shall be exempt from import, customs and other dues. It further provides that all matter sent by mail, including parcel post remittances of money, to or from internees shall be exempt from all postal dues in countries of origin, destination and transit. The cost of transporting relief shipments for internees which cannot be sent through the mails shall be paid by the detaining power in all territories under its control and by other Parties to the Convention in their territories. The Parties to the Convention shall endeavor to reduce charges for telegrams sent by or addressed to internees.

### Present texts

All relief shipments for internees shall be exempt from import, customs and other dues.

All matter sent by mail, including relief parcels sent by parcel post and remittances of money, addressed from other countries to internees or despatch by them through the post office, either direct or through the Information Bureaux provided for in Article 136 and the Central Information Agency provided for in Article 140, shall be exempt from all postal dues both in the countries of origin and destination and in intermediate countries. To this end, in particular, the exemption provided by the Universal Postal Convention of 1947 and by the agreements of the Universal Postal Union in favour of civilians of enemy nationality detained in camps or civilian prisons, shall be extended to the other interned persons protected by the present Convention. The countries not signatory to the above-mentioned agreements shall be bound to grant freedom from charges in the same circumstances.

The cost of transporting relief shipments which are interned for internees and which, by reason of their weight or any other cause, cannot be sent through the post office, shall be borne by the Detaining Power in all the territories under its control. Other Powers which are Parties to the present Convention shall bear the cost of transport in their respective territories.

Costs connected with the transport of such shipments, which are not covered by the above paragraphs, shall be charged to the senders.

The High Contracting Parties shall endeavor to reduce, so far as possible, the charges for telegrams sent by internees, or addressed to them.

Prior

### Prior texts

Article 37 of the Universal Postal Convention of 1952, effective July 1, 1953, to which the United States is a party, provides as follows:

1. Articles of correspondence, insured letters and boxes, parcel post, and postal money orders addressed to prisoners of war or sent by them, either directly or through the intermediary of the Bureaus of Information prescribed by Article 122 of the Geneva Convention relative to the treatment of prisoners of war of August 12, 1949, and of the Central Agency of Information on prisoners of war prescribed by Article 123 of the same Convention, are exempt from all postal charges. Belligerents received and interned in a neutral country are considered as prisoners of war properly so called insofar as it concerns the application of the foregoing provisions.

2. The provisions of Section 1 also apply to articles of correspondence, insured letters and boxes, parcel post, and postal money orders originating in other countries, addressed to interned civilians covered by the Geneva Convention relative to the protection of civilians in time of war of August 12, 1949, or sent by them, either directly or through the intermediary of the Bureaus of Information prescribed by Article 136 and of the Central Agency of Information prescribed by Article 140 of the same Convention.

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5. Parcels are accepted postage-free up to the weight of 5 kilograms. The weight limit is raised to 10 kilograms for articles whose contents cannot be divided and for those addressed to a camp or to trust worthy persons in such camp for delivery to prisoners.

### Background

Article 110 generally corresponds to Article 74 of the Prisoner of War Convention. Indeed, such provisions with respect to prisoners of war appear in Article 16 of the Hague Regulations of 1907.

It should be noted that in the case of relief shipments intended for civilians interned in the United States and which cannot be sent through the mails, our government will be obligated to pay the costs of transportation within the United States, since our transportation system is privately owned. Similarly, we could not accept a rigid obligation to reduce charges on telegrams sent to or by internees, since our telegraph system is privately owned. Our obligation under Article 110 to "endeavor to reduce" such telegraphic charges will be satisfied if, for example, we make reasonable

efforts

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efforts to arrange with the telegraph companies for the use of standard form telegrams at reduced rates.

Generally, these reciprocal arrangements for free mailing and transport would seem to be beneficial to the United States in that we are likely to make an unusual effort to assist our nationals who may be interned in other countries.



## ARTICLE 111

### Substance

Article 111 provides that if military operations should prevent the Powers concerned from carrying out their obligation under Articles 106-108 and 113 to insure the conveyance of mail and relief shipments, the Protecting Powers concerned, the International Committee of the Red Cross, or any other organization approved by the parties to the conflict may undertake such transportation.

### Present text

Should military operations prevent the Powers concerned from fulfilling their obligation to ensure the conveyance of the mail and relief shipments provided for in Articles 106, 107, 108 and 113, the Protecting Power concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake the conveyance of such shipments by suitable means (rail, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport, and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

- (a) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 140 and the National Bureaux referred to in Article 136;
- (b) correspondence and reports relating to internees which the Protecting Powers, the International Committee of the Red Cross or any other organization assisting the internees exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

The costs occasioned by the use of such means of transport shall be borne, in proportion to the importance of the shipments, by the Parties to the conflict whose nationals are benefited thereby.

### Prior texts

None.

### Background



Background

Article 111 generally corresponds to Article 75 of the Prisoner of War Convention. Toward the end of World War II, conditions became so chaotic in certain areas that the International Committee of the Red Cross found it necessary to undertake the transport of mail and relief shipments for prisoners of war. In view of this experience, the purpose of Article 111 is to encourage and facilitate Protecting Powers and the Committee in undertaking such transportation when military operations prevent governments from discharging their obligations to do so under the Convention.

ARTICLE 112Substance

Article 112 provides that the censoring of internees' correspondence shall be done as quickly as possible, and that any prohibition of their correspondence for military or political reasons shall be as brief as possible.

Present text

The censoring of correspondence addressed to internees or despatched by them shall be done as quickly as possible.

The examination of consignments intended for internees shall not be carried out under conditions that will expose the goods contained in them to deterioration. It shall be done in the presence of the addressee, or of a fellow-internee duly delegated by him. The delivery to internees of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by the Parties to the conflict either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Prior texts

None.

Background.

Article 112 generally corresponds to Article 76 of the Prisoner of War Convention.

ARTICLE 113Substance

The detaining power must facilitate the preparation by internees of wills and similar documents and must provide for the transmission of such documents prepared by or addressed to internees.

Present text

The Detaining Powers shall provide all reasonable facilities for the transmission, through the Protecting Power or the Central Agency provided for in Article 140, or as otherwise required, of wills, powers of attorney, letters of authority, or any other documents intended for internees or despatched by them.

In all cases the Detaining Powers shall facilitate the execution and authentication in due legal form of such documents on behalf of internees, in particular by allowing them to consult a lawyer.

Prior texts

None.

Background

Article 113 generally corresponds to Article 77 of the Prisoner of War Convention. One important difference is that Article 77 of the latter Convention contemplates that wills etc. prepared by prisoners of war will be transmitted to their homelands through the Protecting Power or the Central Prisoners of War Agency. However, Article 113 of the Civilian Convention recognizes that civilian internees often are residents of the country in which they are detained, so that other arrangements for the preservation and transmission of such documents will be appropriate.



ARTICLE 114Substance

The detaining power shall facilitate internees' management of their property so far as this is compatible with the conditions of internment and applicable law (e.g. alien property legislation).

Present text.

The Detaining Power shall afford internees all facilities to enable them to manage their property, provided this is not incompatible with the conditions of internment and the law which is applicable. For this purpose, the said Power may give them permission to leave the place of internment in urgent cases and if circumstances allow.

Prior texts

None.

Background

It is clear that the conditions of internment are necessarily such that an internee cannot expect to continue the active direction of a business enterprise. Moreover, it is not likely that a detaining power which has interned alien enemies for security reasons will be inclined to permit them to go on business trips. On the other hand, a detaining power should endeavor to permit reasonable correspondence by internees with respect to investments and the management and preservation of real estate.



ARTICLE 115Substance and present text

In all cases where an internee is a party to proceedings in any court, the Detaining Power shall, if he so requests, cause the court to be informed of his detention and shall, within legal limits, ensure that all necessary steps are taken to prevent him from being in any way prejudiced, by reason of his internment, as regards the preparation and conduct of his case or as regards the execution of any judgment of the court.

Prior texts

None.

Background

Article 115 is carefully phrased to permit fair and flexible treatment of the interests of civilian internees, whether in the territory of the detaining power or in occupied territory, who are parties to litigation. The Geneva Conference was unwilling to require automatic continuance of such litigation, because postponement often would prejudice the interests of other parties while not being essential to the internee's interests. Similarly, the Conference was reluctant to require the detaining power to interfere with the operation of the regular civil courts, particularly in occupied territory. Thus, Committee III of the Geneva Conference considered "that the obligations of the Detaining Power should be limited to giving the Court such additional information as the Court would require in order to come to a proper decision in relation to the affairs of an internee." IIA Final Record 842.

The fact that an alien enemy residing in the United States has been interned does not per se prevent him from maintaining a suit in our courts. - Ex parte Kawata, 317 U. S. 69. Also, American courts have frequently had occasion to determine whether to permit civil litigation to continue against absent alien enemy defendants. Generally, the courts have tried to strike a balance between the inconvenience and possible prejudice to the plaintiff if the suit was postponed indefinitely as against the possible prejudice to the defendant if the suit was not postponed. In cases involving civilian internees, Article 115 would permit American courts to continue to determine in the circumstances of each case whether and under what conditions it would be just to permit such litigation to proceed to judgment.

ARTICLE 116Substance

Subject to security considerations, internees shall be permitted to receive visitors. In urgent cases, and subject to the same considerations, internees may visit their homes.

Present text

Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible.

As far as is possible, internees shall be permitted to visit their homes in urgent cases, particularly in cases of death or serious illness of relatives.

Prior texts

None.

Background

Committee III of the Geneva Conference qualified the first sentence of Article 116 by adding to its beginning the phrase "In so far as circumstances permit". This phrase was deleted in Plenary Session. However, the first sentence should not be regarded as giving to civilians who have been interned for security reasons an absolute right to receive visitors, since such rights of communication, whether in occupied territory or in the territory of the detaining power, may be restricted or suspended on security grounds under Article 5. The phrase "as far as is possible" in the second paragraph of Article 116 imports a similar qualification.



PENAL AND DISCIPLINARY SANCTIONS

Chapter IX, comprising Articles 117-126 inclusive, relate to the imposition of penal sanctions on internees who commit ordinary crimes and the imposition of disciplinary sanctions on internees who violate internment regulations.

ARTICLE 117Substance

The criminal law of the territory in which internees are detained (i.e., the territory of the detaining power or occupied territory) will apply to offenses which they commit during internment, subject to such modifications as are caused by Chapter IX of this Convention (e.g., the first paragraph of Article 118). Acts which are made punishable only when committed by internees shall incur only disciplinary punishment as defined in Article 119. No internee may be punished more than once for the same act or on the same count.

Present text

Subject to the provisions of the present Chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offenses during internment.

If general laws, regulations or orders declare acts committed by internees to be punishable, whereas the same acts are not punishable when committed by persons who are not internees, such acts shall entail disciplinary punishments only.

No internee may be punished more than once for the same act, or on the same count.

Prior texts

None.

Background

Article 117 generally corresponds to Article 82 and 86 of the Prisoner of War Convention.

ARTICLE 118Substance

Article 118 lays down several principles governing the sentencing and penal treatment of internees who commit offenses.

Present text

The courts or authorities shall in passing sentence take as far as possible into account the fact that the defendant is not a national of the Detaining Power. They shall be free to reduce the penalty prescribed for the offense with which the internee is charged and shall not be obliged, to this end, to apply the minimum sentence prescribed.

Imprisonment in premises without daylight and, in general, all forms of cruelty without exception are forbidden.

Internees who have served disciplinary or judicial sentences shall not be treated differently from other internees.

The duration of preventive detention undergone by an internee shall be deducted from any disciplinary or judicial penalty involving confinement to which he may be sentenced.

Internee Committees shall be informed of all judicial proceedings instituted against internees whom they represent, and of their result.

Prior texts

None.

Background

The provisions of Article 118 generally correspond to the provisions of the second and third paragraphs of Article 87, the fourth paragraph of Article 88, and the second sentence of Article 90 of the Prisoner of War Convention.

The first paragraph of Article 118 requires that in sentencing internees courts or authorities of the detaining power shall take into account the fact that they are not its nationals, and shall be free to ignore specific or minimum penalties prescribed by the applicable criminal law. At the Geneva Conference, the United States Delegation vigorously, but unsuccessfully opposed this provision on the ground that



there was no reason why an interned alien who had committed a criminal offense against a fellow internee, for example, should not be subject to any minimum punishment which would apply if neither were interned. IIB Final Record 476. The United States did not make a reservation to this provision in signing the Civilian Convention because it was confident that American judges would make a sparing use of such dispensing power. Since Article 118 appears to be self-executing, it will qualify such prior statutes as 18 U.S.C. Code 13 and 1111 in cases in which internees are tried for ordinary crimes in Federal courts.

ARTICLE 119Substance

An internee may be subjected to the following disciplinary punishments: (1) a fine of not more than half of the wages for thirty days; (2) discontinuance of privileges over and above the treatment required by the Convention; (3) fatigue duties not in excess of two hours per day; (4) confinement not in excess of thirty days. Disciplinary penalties shall be humane and shall take into account the internee's age, sex and health.

Present text

The disciplinary punishments applicable to internees shall be the following:

(1) a fine which shall not exceed 50 per cent of the wages which the internee would otherwise receive under the provisions of Article 95 during a period of not more than thirty days.

(2) Discontinuance of privileges granted over and above the treatment provided for the present Convention.

(3) Fatigue duties, not exceeding two hours daily, in connection with the maintenance of the place of internment.

(4) Confinement.

In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee's age, sex and state of health

The duration of any single punishment shall in no case exceed a maximum of thirty consecutive days, even if the internee is answerable for several breaches of discipline when his case is dealt with, whether such breaches are connected or not.

Prior texts

None.

Background

Article 119 generally corresponds to Article 89 and the second paragraph of Article 90 of the Prisoner of War Convention. The disciplinary punishments enumerated in

Article 119 are the only punishments which may be imposed on internees for acts which are not punishable when committed by persons who are not internees. The Geneva Conference modified the Stockholm draft by reducing the allowable punishment by fine from 50% of wages and allowances to 50% of wages alone, on the ground that allowances paid to internees by the detaining power should not be subject to disciplinary sanctions. Also, while the Stockholm draft had provided for punishment in the form of fatigue duties without time limitation, and for additional work of the same type as their usual employment not exceeding two hours daily, the Geneva Conference provided that punishment in the form of work should be limited to fatigue duties in the maintenance of the place of internment for not more than two hours daily. II A Final Record 842-843.



ARTICLE 120Substance

Only disciplinary punishment may be imposed upon internees for escapes or attempts to escape or for aiding or abetting other internees to escape or attempt to escape. Internees who have been punished for escape or attempt to escape may be subjected thereafter to special surveillance to prevent further attempts to escape.

Present text

Internees who are recaptured after having escaped or when attempting to escape, shall be liable only to disciplinary punishment in respect of this act, even if it is a repeated offense.

Article 118, paragraph 3, notwithstanding, internees punished as a result of escape or attempt to escape, may be subjected to special surveillance, on condition that such surveillance does not affect the state of their health, that it is exercised in a place of internment and that it does not entail the abolition of any of the safeguards granted by the present Convention.

Internees who aid and abet an escape or attempt to escape, shall be liable on this count to disciplinary punishment only.

Prior texts

None.

Background

Article 120 generally corresponds to Article 92 and the third paragraph of Article 93 of the Prisoner of War Convention.

The principle that prisoners of war shall not be subjected to more than disciplinary punishment for escape, attempts to escape, or aiding escapes appeared in Articles 50 and 51 of the 1929 Prisoner of War Convention (and to some extent in Article 8 of the Hague Regulations of 1907) and is applied by Article 120 to civilian internees. However, it is clear that this principle applies only to escape from internment and not to escapes or attempts to escape from such institutions in which internees may be serving sentences



Multilateral Convention--War Prisoners. July 27, 1929, 47 Stat. 2048). The last sentence of the proposed bill makes it clear that this provision of the Geneva Convention would not be superseded.

Thus, Congress made it clear that it did not intend by this legislation to impose more than disciplinary punishment upon prisoners of war who aided their comrades in escaping or attempting to escape. It is arguable, but not conclusively so, that this exempting purpose of the last sentence of 18 U. S. C. 757 would also apply to civilian internees who aid other internees to escape, even though Article 120 was not in existence when this statute was enacted in 1945. However, regardless of whether the last sentence of Section 756 by itself would apply in this situation, Article 120 will be controlling when it becomes effective--a result which is clearly consistent with the Congressional purpose in 1945.

It is clear that persons other than internees who assist internees to escape are not covered by Article 120 and remain subject to 18 U. S. C. 757.

While Article 118 provides that "Internees who have served disciplinary \*\*\* sentences shall not be treated differently from other internees," the second paragraph of Article 120 specifies that, notwithstanding this provision of Article 118, internees who have been punished for escape or attempt to escape may thereafter be subjected to special surveillance under humane conditions.

ARTICLE 121Substance

When an internee is prosecuted for offenses committed during his escape, the fact of his escape or attempted escape shall not be treated as an aggravating circumstance, i. e., as increasing the applicable punishment. A detaining power shall exercise leniency in determining whether internees are subjected to judicial or disciplinary punishment for offenses, particularly offenses committed in connection with escapes.

Present text

Escape, or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance in cases where an internee is prosecuted for offences committed during his escape.

The parties to the conflict shall ensure that the competent authorities exercise leniency in deciding whether punishment inflicted for an offence shall be of a disciplinary or judicial nature, especially in respect of acts committed in connection with an escape, whether successful or not.

Prior texts

None.

Background

Article 121 generally corresponds to the first paragraph of Article 93 and Article 83 of the Prisoner of War Convention.

"Escape" as used in Article 121 means escape from internment and not escapes from other forms of legal custody --such as imprisonment as a punishment for crime. IIA Final Record 843.

It should be noted that in the Stockholm draft Article 121 contained an additional paragraph as follows:

In particular, offences without violence against persons, offences against public property, theft without intention of self-enrichment, the drawing up and use of false papers, shall occasion disciplinary punishment only, provided such violations have been committed with the sole intent of facilitating escape.

The Geneva Conference adopted an amendment by the United States Delegation to delete this paragraph, the report of Committee III stating that "it was felt that the paragraph, which had the effect of putting an escaped internee very largely outside the provisions of criminal law so long as he could contend that the offences he committed were done in the course of his attempt to escape, was rejected as entirely unreasonable and dangerous." IIA Final Record 843. The Geneva Conference also toned down the second paragraph of Article 121 by deleting the words "the greatest," which had preceded "leniency" in the Stockholm draft.



ARTICLE 122Substance

Article 122 prescribes certain rules for the treatment of internees' offenses against discipline.

Present text

Acts which constitute offences against discipline shall be investigated immediately. This rule shall be applied, in particular, in cases of escape or attempt to escape. Recaptured internees shall be handed over to the competent authorities as soon as possible.

In case of offences against discipline, confinement awaiting trial shall be reduced to an absolute minimum for all internees, and shall not exceed fourteen days. Its duration shall in any case be deducted from any sentence of confinement.

The provisions of Articles 124 and 125 shall apply to internees who are in confinement awaiting trial for offenses against discipline.

Prior texts

None.

Background

Article 122 generally corresponds to the provisions of paragraph one of Article 96, paragraph two of Article 92, and paragraphs two and three of Article 95 of the Prisoner of War Convention.

The provisions of Article 122 apply only to disciplinary offences, and do not apply to crimes, i. e., acts which are punishable no matter by whom committed. See Article 117.



ARTICLE 123Substance

Article 123 prescribes the minimum procedure to be followed by the detaining power in imposing disciplinary punishment upon civilian internees.

Present text

Without prejudice to the competence of courts and higher authorities, disciplinary punishment may be ordered only by the commandant of the place of internment, or by a responsible officer or official who replaces him, or to whom he has delegated his disciplinary powers.

Before any disciplinary punishment is awarded, the accused internee shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced in the presence of the accused and of a member of the Internee Committee.

The period elapsing between the time of award of a disciplinary punishment and its execution shall not exceed one month.

When an internee is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

A record of disciplinary punishments shall be maintained by the commandant of the place of internment and shall be open to inspection by representatives of the Protecting Power.

Prior texts

None.

Background

Article 123 generally corresponds to Article 96 and the third and fourth paragraphs of Article 90 of the Prisoner of War Convention.

Under the first paragraph of Article 123, the official in charge of a place of internment may delegate his disciplinary powers to a responsible subordinate, but he may not, for example, delegate

then to an internee.

It will be noted that the minimum procedures required by paragraph two, while relatively simple, are appropriate to the limited disciplinary punishments authorized by Article 119.

ARTICLE 124Substance

Internees who are subjected to disciplinary sentences of confinement shall not serve such sentences in ordinary prison establishments. The premises in which internees serve disciplinary sentences must be adequate.

Present text

Internees shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

The premises in which disciplinary punishments are undergone shall conform to sanitary requirements; they shall in particular be provided with adequate bedding. Internees undergoing punishment shall be enabled to keep themselves in a state of cleanliness.

Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women.

Prior texts

None.

Background

Article 124 generally corresponds to Article 97 of the Prisoner of War Convention.



# ARTICLE 125

## Substance

Article 125 provides that internees serving disciplinary punishment shall retain specified rights and privileges, including correspondence rights under Article 107 and that representatives of the Protecting Power and of the International Committee of the Red Cross shall continue to have access to such internees.

## Present text

Internees awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, if they so request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the infirmary of the place of internment or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of their punishment; such consignments shall meanwhile be entrusted to the Internee Committee, who will hand over to the infirmary the perishable goods contained in the parcels.

No internee given a disciplinary punishment may be deprived of the benefit of the provisions of Articles 107 and 113 of the present Convention.

## Prior texts

None.

## Background

Article 125 generally corresponds to Article 98 of the Prisoner of War Convention.



## ARTICLE 126

Substance

Where civilian internees in the national territory of the detaining power are subjected to regular judicial trial on criminal charges (as distinguished from acts which incur only disciplinary punishment), the minimum standards of judicial procedure and penal treatment set forth in Articles 71 to 76, inclusive, shall be applied by analogy in such cases.

Present text

The provisions of Articles 71 to 76 inclusive shall apply, by analogy, to proceedings against internees who are in the national territory of the Detaining Power.

Prior texts

None.

Background

Articles 71 to 76, inclusive, prescribe minimum standards of judicial procedure and penal treatment to be followed where protected persons in occupied territory, including civilian internees in occupied territory, are tried by tribunals of the occupying power. The purpose of Article 126 is to establish minimum standards of judicial procedure and penal treatment where civilian internees in the national territory of the detaining power are tried by its courts on criminal charges. Article 126 does this by making Articles 71 to 76 apply by analogy to such cases. These requirements generally correspond to the provisions of the Prisoner of War Convention governing the trial of prisoners of war, and are largely embodied in American criminal procedures. The principal features which would be added by reason of Article 126 are (1) various provisions for giving notice and information to the Protecting Power; (2) the time to appeal in cases involving a death sentence or imprisonment of two years or more shall not run until the Protecting Power has received notice of the judgment; (3) a death sentence may not be carried out, except for grave security reasons, until at least six months after the Protecting Power receives notice of the final judgment confirming the sentence or of an order denying a pardon or reprieve; and (4) the representatives of the Protecting Power and of the International Committee of the Red Cross must be permitted to visit such imprisoned internees. The provision of Article 76 that protected persons shall serve their sentence in occupied territory is inapplicable in the case of internees in the home territory of the

detaining power and illustrates why Article 126 requires that Articles 71 to 76 be applied by analogy.

During World War II, no civilian internee detained by the United States in this country was tried on criminal charges.



## TRANSFERS OF INTERNEES

## ARTICLE 127

Substance

Transfers of internees shall be carried out humanely.

Present text

The transfer of internees shall always be effected humanely. As a general rule, it shall be carried out by rail or other means of transport, and under conditions at least equal to those obtaining for the forces of the Detaining Power in their changes of station. If, as an exceptional measure, such removals have to be effected on foot, they may not take place unless the internees are in a fit state of health, and may not in any case expose them to excessive fatigue.

The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred.

Sick, wounded or infirm internees and maternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands.

If the combat zone draws close to a place of internment, the internees in the said place shall not be transferred unless their removal can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

When making decisions regarding the transfer of internees, the Detaining Power shall take their interests into account and, in particular, shall not do anything to increase the difficulties of repatriating them or returning them to their own homes.

Prior texts

None.

Background

Article 127 generally corresponds to Article 46 and 47 of the Prisoner of War Convention.

## ARTICLE 128

Substance

In the event of transfer, internees must be advised of and permitted to notify their next of kin of their new address, and be permitted to take with them not less than 25 kilograms (55 pounds) per internee. The balance of their property and mail addressed to them shall be forwarded to their new place of internment.

Present text

In the event of transfer, internees shall be officially advised of their departure and of their new postal address. Such notification shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited if the conditions of transfer so require, but in no case to less than twenty-five kilograms per internee.

Mail and parcels addressed to their former place of internment shall be forwarded to them without delay.

The commandant of the place of internment shall take, in agreement with the Internee Committee, any measures needed to ensure the transport of the internees' community property and of the luggage the internees are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph.

Prior texts

None.

Background

Article 128 generally corresponds to Article 48 of the Prisoner of War Convention.



## CHAPTER XI - DEATHS

## ARTICLE 129

Substance

Internees' wills shall be received for safe-keeping by authorities of the detaining power and, in the event of death, shall be forwarded to the persons designated by such internees. Medical certificates shall be made in every case of death of an internee. An official record of the death shall be made in accordance with the local law and copies of such record shall be transmitted to the Protecting Power and to the Central Information agency for protected persons contemplated by Article 140.

Present text

The wills of internees shall be received for safe-keeping by the responsible authorities; and in the event of the death of an internee his will shall be transmitted without delay to a person whom he has previously designated.

Deaths of internees shall be certified in every case by a doctor, and a death certificate shall be made out, showing the causes of death and the conditions under which it occurred.

An official record of the death, duly registered, shall be drawn up in accordance with the procedure relating thereto in force in the territory where the place of internment is situated, and a duly certified copy of such record shall be transmitted without delay to the Protecting Power as well as to the Central Agency referred to in Article 140.

Prior texts

None.

Background

Article 129 generally corresponds to the first two paragraphs of Article 120 of the Prisoner of War Convention.

The requirement that an official record be made of an internee's death was explained as follows in the report of Committee III of the Geneva Conference:

\* \* \* The essential, in the Committee's view, is to ensure that the official record of death is drawn up in a way which is most likely to ensure that subsequent legal transactions which may depend upon that record are not hampered. This would mean that there should be no difference between the official record of the death of the internee and the official record of the death of any other person in the territory, \* \* \* II A Final Record 844.

## ARTICLE 130

Substance

Article 130 governs the burial of deceased internees, requires that their graves be marked adequately, and provides that information as to the identification of deceased internees and the location of their graves shall be forwarded to their home countries through the detaining power's Information Bureau.

Present text.

The detaining authorities shall ensure that internees who die while interned are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized.

Deceased internees shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his expressed wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. The ashes shall be retained for safe-keeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request.

As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the Powers on whom the deceased internees depended, through the Information Bureau provided for in Article 136. Such lists shall all particulars necessary for the identification of the deceased internees, as well as the exact location of their graves.

Prior texts

None.

Background

Article 130 generally corresponds to the last four paragraphs of Article 120 of the Prisoner of War Convention.



## ARTICLE 131

### Substance.

The detaining power shall make an official inquiry into every death or serious injury of an internee caused or suspected to have been caused by a sentry, another internee or any other person, and into every death from unknown causes. The results of such inquiry shall be given to the Protecting Power, and the detaining power shall prosecute any person whose criminal conduct caused such death or injury.

### Present text.

Every death or serious injury of an internee, caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official inquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the protecting Power. The evidence of any witnesses shall be taken, and a report including such evidence shall be prepared and forwarded to the said Protecting Power.

If the inquiry indicates the guilt of one or more persons, the Detaining Power shall take all necessary steps to ensure the prosecution of the person or persons responsible.

### Prior texts.

None.

### Background.

Article 131 corresponds to Article 121 of the Prisoner of War Convention.

The report of Committee III of the Geneva Conference makes it clear that "the phrase 'official inquiry' would include a criminal prosecution, i.e., that where criminal prosecution is undertaken on the facts revealed on preliminary investigation, there need not be any other 'official inquiry'". IIA Final Record 844.



CHAPTER XII -- RELEASE, REPATRIATION AND  
ACCOMMODATION IN NEUTRAL COUNTRIES

ARTICLE 132

Substance and Present text.

Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.

The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.

Prior texts.

None.

## ARTICLE 133

Substance.

Internment shall cease as soon as possible after the close of hostilities. However, internees may be detained to finish serving sentences of confinement previously imposed on them, and for the completion of pending criminal proceedings (as distinguished from disciplinary proceedings) and to serve any resulting sentences of imprisonment. After the close of hostilities, committees may be set up by agreement to search for dispersed internees.

Present text.

Internment shall cease as soon as possible after the close of hostilities.

Internees in the territory of a Party to the conflict against whom penal proceedings are pending for offences not exclusively subject to disciplinary penalties, may be detained until the close of such proceedings and, if circumstances require, until the completion of the penalty. The same shall apply to internees who have been previously sentenced to a punishment depriving them of liberty.

By agreement between the Detaining Power and the Powers concerned, committees may be set up after the close of hostilities, or of the occupation of territories, to search for dispersed internees.

Prior texts.

None.

Background

The Conference record makes it clear that both in its home territory and in occupied territory a detaining power may have difficulties not of its own making in immediately releasing or repatriating all civilian internees. Article 133 allows reasonable flexibility in meeting such problems. Similarly, the report of Committee III of the Geneva Conference makes clear that the first paragraph of Article 133 was not intended to forbid the subjection of persons to internment after the close of hostilities. IIA Final Record 844.

## ARTICLE 134

Substance and present text.

The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation.

Prior texts.

None.



# ARTICLE 135

## Substance.

The detaining power shall bear the cost of returning released internees to the places where they resided when they were interned. Article 135 also defines the circumstances in which and the extent to which the detaining power must pay the cost of repatriating internees to their home countries.

## Present text.

The Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned, or, if it took them into custody while they were in transit or on the high seas, the cost of completing their journey or of their return to their point of departure.

Where a Detaining Power refuses permission to reside in its territory to a released internee who previously had his permanent domicile therein, such Detaining Power shall pay the cost of the said internee's repatriation. If, however, the internee elects to return to his country on his own responsibility or in obedience to the Government of the Power to which he owes allegiance, the Detaining Power need not pay the expenses of his journey beyond the point of his departure from its territory. The Detaining Power need not pay the costs of repatriation of an internee who was interned at his own request.

If internees are transferred in accordance with Article 45, the transferring and receiving Powers shall agree on the portion of the above costs to be borne by each.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

## Prior texts.

None.



Section V

Articles 136-141 inclusive

Substance

Section V, "Information Bureau and Central Agency", establishes procedure for exchange of information regarding protected persons who are kept in custody for more than two weeks, subjected to assigned residence, or interned. It is only as to such protected persons that exchange of information is required; it is required whether they are in the territory of a belligerent or in occupied territory (Art. 136).

The information is to be such as to identify the protected person, and to advise his next-of-kin quickly of his whereabouts, state of health and the nature of the actions taken respecting him (Art. 138).

Parties to a conflict must establish Information Bureaux to forward such information, answer inquiries, and to collect and handle the personal valuables of the protected persons (Arts. 136, 137, 139).

In addition to the national Information Bureaux, a Central Information Agency is to be established in a neutral country. The initiative is to be taken by the International Committee of the Red Cross, and the Agency may be the same as that through which the ICRC handles prisoner-of-war information exchange. The Agency is to collect and forward the information previously referred to (Art. 140).

National Bureaux are to supply information to the protecting powers as well as to the Central Agency, but they may withhold it from the former if it would be detrimental to the protected person or his relatives. The Central Agency, which receives all information, must similarly take such necessary precautions (Art. 137).

Parties to the conflict must facilitate the work of the Central Information Agency, and are requested to give financial assistance for the work benefiting their respective nationals (Art. 140).

Both the National Bureaux and Central Information Agency are to enjoy free postage. They are to enjoy the exemption from import, customs and other duties, and all parcel post, money order and postage dues, as provided in Article 110. In so far as possible, they are to be exempted from or are to receive greatly reduced telegraphic rates (Art. 141).

Present Text - [in final]

Previous

## Previous Texts

None.

## Background

### (a) General

Articles 136-141 correspond in general to the provisions for Information Bureaux and a Central Information Agency found in the Prisoners of War Convention (Articles 122-124 GPN).

### (b) Occasions for Reporting to Protecting Powers, National Bureaux, and Central Information Agency

While the Protecting Power and ICRC or a substitute may properly inquire into the status of any protected person (e.g. Articles 2, 9, 10, 11, 12, 25, 26, 30, 35, 71-78, 98, 101, 104, 111, 123, 142, 143), subject to security considerations (Articles 5, 9, 30, 35, 42, 43, 74), the duty upon the detaining power to report arises only in specified cases (for example, in connection with dismissal of internee representatives (Art. 102), limitation on relief shipments (Art. 103), deaths of internees (129, 130, 131), lists of labor detachments (Art. 96), location of camps (Art. 83), transfers (Art. 49), refusal of an exit permit (Art. 35) and prosecutions and convictions (Articles 71, 74, 75)), and more generally whenever a protected person is interned, subjected to assigned residence, or kept in custody for more than two weeks (Articles 105, 106, 136, 137, 43).

The Stockholm text had contemplated a report of every arrest. The Canadian and other Delegations pointed out that this would be an impracticable and self-defeating burden. Committee III accordingly concluded that "it would be desirable by way of safeguard to provide that detention in connection with criminal or quasi-criminal charges as well as detention for political reasons -- whether effected by State or Federal authorities or, for example, by "political" police -- should be recorded by the appropriate bureau, unless the person in question was released within two weeks". IIA Fin. Rec. 689, 792, 845

### (c) Express Provisions for Protected Information

Articles 137 and 140 are important in that they contain express recognition of the principle that information which will, if transmitted to a protecting power or to a country of origin, be detrimental to the protected person or his relatives, shall not be so transmitted either by the detaining power or by the Central Information Agency. That Agency must receive both the information and the reasons, including the expressed wishes of the person concerned, upon which

it



it must decide whether transmission is precluded under Article 140. The safeguard applied whether the information derives from official or from private channels. IIA Fin. Rec. 689, 845.

(d) Postal, Customs, Telegraphic, etc., expenses

(1) Article 141 is identical with Article 124 of the 1949 Prisoners of War Convention which derived in turn from Article 80 of the 1929 Prisoners of War Convention. Under Article 37 of the Universal Postal Union Convention of July 11, 1952, to which the US is a party, specific provision is made for the franking privileges bestowed by Article 141.

(2) As the Report of Committee III has emphasized, it is only a moral, and not a legal obligation that is created by Article 141 with respect to reduced telegraphic charges. IIA Fin. Rec. 845. Where, for example, voluntary arrangements for reduction with the companies concerned could not accomplish a sufficient reduction to facilitate the operation of a Central Information Agency, it would be open to the governments concerned to effect other arrangements to the same end.

(e) Administrative Arrangements

During World War II, the United States maintained complete records on civilian persons it held in custody in the United States and abroad. Moreover, we cooperated by furnishing information to the protecting powers and the ICRC. Records were maintained in the Department of Justice for persons in the United States and by the Army for persons in occupied areas. In either case, communication with the protecting powers or ICRC is within the jurisdiction of the Department of State, although there is room for administrative flexibility in arranging expeditious handling of particular communications.

## Article 122

### Substance

Subject to security measures, representatives of religious organizations, relief societies, or other organizations shall be assisted in visiting protected persons and distributing relief and other supplies. Limitations on the number of such societies and organizations shall not hinder effective relief. The special position of the International Committee of the Red Cross is to be respected.

### Present Text

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the protected persons, shall receive from these Powers, for themselves or their duly accredited agents, all facilities for visiting the protected persons, for distributing relief supplies and material from any source, intended for educational, recreational or religious purposes, or for assisting them in organizing their leisure time within the places of internment. Such societies or organizations may be constituted in the territory of the Detaining Power, or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the supply of effective and adequate relief to all protected persons.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

### Previous Text

None.

### Background

This Article is based on a draft submitted to the Stockholm Conference in 1948 by the Delegation of the Holy See. It conforms to Article 125 of the Prisoners of War Convention with the exception that the last paragraph of Article 125 relating to receipts for consignments of relief supplies does not appear.

During World War II the United States permitted representatives of the Vatican, the Young Men's Christian Association, the International Committee of the Red Cross and other organizations to visit internees and distribute supplies. Such supplies as were distributed were generally comfort or morale articles or reading material, as internees' needs were

otherwise



otherwise well taken care of. It was not deemed feasible to grant all agencies requesting it permission to visit and distribute relief.

Although there was no Convention obligation, the special position of the International Committee of the Red Cross was respected at all times. The Committee had a permanent Delegation in the United States and had considerable freedom of action respecting visits and supply of material. The Committee was also given visitation rights to civilians in United States custody abroad.

The Committee has summed up its relief work during World War II (See Report of the International Committee of the Red Cross in its activities during the Second world war - Volume III Relief Activities) as follows: (1) regular bulk consignments in Europe to some 2,000,000 Allied prisoners of war and civilian internees and smaller relief consignments sent to Allied prisoners of war and civilian internees in the Far East; (2) occasional consignments, whenever the need became urgent, to about 1,000,000 German and Italian prisoners of war and civilian internees, such consignments being most frequent in the period immediately after the end of the war in 1945 and 1946; (3) small consignments to some 300,000 civilian deportees and internees of all kinds; and (4) large consignments to civilian victims of the war, particularly those in specified categories such as children, women, the aged, the sick and disabled, or inhabitants of areas that had particularly suffered as a result of military operations (such as the Channel Islands, the French Atlantic coast after the Allied invasion in 1944, and the western provinces of the Netherlands at the beginning of 1945, the children of Paris in 1940, and in particular, civilians in Greece after the campaign of 1940-1941). These measures were undertaken with the assistance of the national Red Cross Societies and the League of Red Cross Societies.

In view of experience in World War II it would appear that we would be benefited and not overburdened in making arrangements for visitation and relief among persons in our hands by the International Committee of the Red Cross or other appropriate agency in conformity to Article 142.

## Article 143

### Substance

Representatives of Protecting Powers shall be permitted freely to visit protected persons, particularly places of internment, detention and work. Representatives of the International Committee of the Red Cross have similar permission. Appropriate security safeguards apply.

### Present Text

Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only, as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting Power and when occasion arises the Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.

### Previous text

None.

### Background

This Article conforms to Article 126 of the Prisoners of War Convention with the exception that Article 126 contains the following provision: "they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred." It was apparently accepted at the Geneva Conference with minimum comment.

In addition



In addition to restrictions for imperative military necessity permitted under the third paragraph, it is to be noted that the privilege of a detaining state to object to individual representatives or delegates and the security provisions of Article 5 provide safeguards against possible abuses.

During World War II representatives of the Protecting Power were permitted to visit places of internment in the United States including work camps. They informed the Department when they wished to make visits and were usually accompanied by representatives of the Department of State. This was done not to restrict their travel but to facilitate it. At the camps they moved about conversing with internees as freely as they wished and there were no restrictions on communication with internees.

The Delegates of the International Committee of the Red Cross also visited such camps as they wished. They were not accompanied by Departmental officers.

The names of the Delegates were notified to the Department in advance for its approval.

In general it may be said that during World War II Protecting Powers endeavored to inspect internee camps (and prisoner of war camps) periodically (usually about every three or four months) and even used in such inspection and the internee interviews a more or less uniform questionnaire.

Article 154Substance

Provides that Civilian Persons Convention supplements Section II of Hague Regulations (1899 and 1907) dealing with some rules of war affecting civilian persons and Section III dealing with the law of military occupation.

Text /to be included in final/

Previous Texts - None

Background

The 1949 Prisoners of War Convention includes a comparable article to establish the relationship between the Hague Regulations and 1949 Convention as between the parties to the several instruments. The language of the 1929 POW Convention was that the 1929 Convention "completed" the relevant Hague Regulations, Chapter II.

Article 154, although initially referred to the Special Committee at Geneva in 1949, was determined not to be a common article and was left to Committee 3. IIB Fin. Rec., 71, 81.

Article 135 of the Stockholm draft had provided that the Civilian Persons Convention would "replace, in respect of the matters treated therein" the Hague Regulations. The uncertain effect of such a provision, particularly in cases where the Hague coverage of a matter might be wider in scope than that of the Civilian Convention, gave rise to dissatisfaction at Geneva in 1949. IIA, Fin. Rec., 675-676. The problem was considered by the Drafting Committee of Committee 3, which approved the present text as suggested by the Norwegian Delegation. III Fin. Rec., 164 (annexes 375, 376); IIA Fin. Rec., 787. In explanation of the present text, the Committee report states:

"Article 135 deals with the regulations between our Convention and those of the Hague; and here the question is one of great difficulty. The Stockholm Draft laid down that our Convention was to replace, in respect of the matters treated therein, the Convention of the Hague. The Committee preferred the following wording proposed by the Norwegian Delegation: our Convention 'shall be supplementary to Sections II and III of the Regulations annexed to the aforesaid Hague Conventions'. This wording is cautious in that it does not attempt to indicate any limitation between the two Conventions, neither does it seek to establish a hierarchy; any such attempt, in a field as complex as this, would be a singularly dangerous undertaking." III Final Record 164; IIA Final Record 811, 846.

For easy reference, the texts of Section III of the Hague Regulations of 1907 and of Section II in so far as immediately relevant to the treatment of Civilian Persons, appear as an appendix to the present volume.



two Conventions, neither does it seek to establish a hierarchy; any such attempt, in a field as complex as this, would be a singularly dangerous undertaking.

"Thus, the two Conventions continue to exist and to remain in force side by side; certain points which the Hague Convention deals with summarily are developed in more detail in our Convention, which is in exact accord with the expression 'shall be supplementary to', appearing in Article 135.

"Should any contradiction arise between the effect of the Hague text and that of our Convention, the interpretation should settle the difficulty in accordance with accepted legal principles, in particular in accordance with the rule that in law, the later supersedes the earlier." III Fin. Rec. 164.

However, objection was made to the last two paragraphs on the ground that they failed to take account of the rule that a more specific provision of earlier law not expressly revoked may govern a more general subsequent law and that they failed to recognize that the Civilian Persons Convention must first come into force. The Committee therefore agreed to eliminate the last two paragraphs of the Rapporteur's Report. IIA Fin. Rec., 811, 846. The USSR entered a formal "reservation" that it would not consider as binding the comments on articles contained in the different sections of the Report. IIA Fin. Rec., 811.

For easy reference, the texts of Section III of the Hague Regulations of 1907 and of Section II in so far as immediately relevant to the treatment of Civilian Persons, appear as an appendix to the present volume.

Appendix  
1/28/15

APPENDIX  
to  
Commentaries on 1949 Geneva Convention  
Relative to the  
Protection of Civilian Persons in Time of War

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Hague Conventions Respecting  
The  
Laws and Customs of War on Land  
of October 18, 1907

(Proclaimed by President, February 26, 1910; \_\_\_\_\_ State. )

Article I

[Text in final]

Article II

[Text in final]

. . . . .

Annex to the Convention  
Regulations Respecting the Laws and Customs  
of War on Land

. . . . .

Section II - Hostilities

[Texts of Articles 22, 23, 24, 25, 26, 27,  
28, 29, 30, 31, in final]

. . . . .

Section III - Military Authority over  
the Territory of the Hostile State

[Text of Articles 42 - 56 inclusive in final]